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From: **Public Lands News** <james@publiclandnewsletter.com>
Date: Fri, Aug 25, 2017 at 6:11 AM
Subject: Public Lands News: Zinke wouldn't revoke monuments; big sage-grouse changes; EPA must repropose methane rule
To: james@publiclandnewsletter.com

Dear Public Lands News Subscriber:

August 25, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 16), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

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Zinke would alter 'handful' of monuments; no revoking

Secretary of Interior Ryan Zinke touched off one of the largest public lands battles ever yesterday (August 24) in recommending that President Trump reduce the size of a "handful" of national monuments. He would also expand some land uses within the monuments.

But Zinke told the *Associated Press* that he did not recommend to President Trump the complete revocation of any of the 27 monuments he reviewed. The secretary posted a summary of a report he submitted to President Trump but that summary did not identify which monuments Zinke would shrink and by how many acres. Or what land uses he would expand.

Zinke months ago had recommended a reduction in the Bears Ears National Monument in Utah; yesterday he submitted final recommendations to the President.

Zinke also recommended changes to allowable uses in the Katahdin Woods and Waters National Monument, without boundary changes, according to the *Bangor Daily News*. That monument is managed by the National Park Service.

Before the final cut Zinke had already announced he would not recommend any change to the Craters of the Moon National Monument and Preserve in Idaho, Hanford Reach National Monument in Washington, Canyons of the Ancients National Monument in Colorado, Upper Missouri River Breaks National Monument in Montana, Grand Canyon-Parashant National Monument in Arizona, and Sand to Snow National Monument in California.

House Natural Resources Committee Chairman Rob Bishop (R-Utah) thanked Zinke for his recommendations. "I am encouraged by the recommendations to revise previous designations that were inconsistent with the law and outside the Act's size limitations. It is my hope that President Trump takes this opportunity to begin realigning uses of the law with its intended purpose," said Bishop.

Not so enthusiastic about Zinke's review is ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.). Just before Zinke was to send up his recommendations Grijalva published a report of his own charging that the secretary's review was biased toward commercial users of the public lands and against protection.

Grijalva repeated environmentalist charges that in Zinke's tours of the West (and of Maine) over the last few months he devoted more time to listening to industry officials than to the public at large. "A review process supposedly intended to include and educate the American public that includes selective, secretive meetings and hides the results of public comments is an obvious sham," said the Grijalva report. His report is available at <http://bit.ly/2iofeBx>.

But in Zinke's summary of his review the secretary said that comments in favor of monuments were the result of "a well-orchestrated national campaign organized by multiple organizations."

He inferred that comments from monuments critics were more substantive. "Opponents point to other cases where monument designation has resulted in reduced public access, road closures, hunting and fishing restrictions, multiple and confusing management plans, reduced grazing allotments and timber production, and pressure applied to private landowners encompassed by or adjacent to a monument to sell," he said.

The Earthjustice environmental law firm indicated that it would file a lawsuit if President Trump attempted to reduce the size of any monument or to revoke a designation altogether. Before Zinke made his recommendations Earthjustice President Trip Van Noppen said, "If President Trump attempts to gut these special places in violation of the Antiquities Act and in spite of this roar of public support, Earthjustice will see him in court."

Before Zinke submitted his report to the White House, 16 western Republican Congressmen threw down an opposite gauntlet in the form of a House Western Caucus position paper. It recommended the complete rescission of ten monument designations and the modification of 13 more. The caucus would not change the boundaries of four monuments.

The Western Caucus would rescind completely the designation of the 1.3 million-acre Bears Ears National Monument in Utah; a 331,000-acre Berryessa Snow Mountain National Monument in northern California (Forest Service and BLM manage); the 103,000-acre Cascade Siskiyou National Monument in Oregon; a 1.01 million-acre Grand Canyon-Parashant National Monument in northwestern Arizona; the 1.7 million-acre Grand Staircase-Escalante National Monument in Utah; a 129,000-acre Ironwood Forest National Monument in Arizona; an 87,000-acre Katahdin Woods and Waters National Monument in Maine (managed by the National Park Service); a 486,000-acre Sonoran Desert National Monument in Arizona; a 280,000-acres Vermilion Cliffs National Monument in Arizona; a 3.1 million-acre Northeast Canyons and Seamounts Marine National Monument in the Atlantic Ocean off New England (managed by NOAA and the Fish and Wildlife Service).

The Western Caucus recommendations are available at:
<https://westerncaucus.house.gov/sites/westerncaucus.house.gov/files/documents/6.30.17%20Final%20letter%20to%20Zinke%20Antiquities%20Review.pdf>.

Trump began the initiative April 26 when he signed an executive order directing the Interior Department to review the designations of national monuments of more than 100,000 acres made since 1996, plus the Maine monument. Trump did not take the ultimate step and say he had the authority to revoke those designations.

The Trump-Zinke review sets the stage for the President to at least reduce the size of the national monuments, if not outright revoke their designations.

In one dramatic action, just before a comment period on the Zinke review ended July 10, the outdoor industry formally pulled its annual conference out of Salt Lake City. The Outdoor Industry Association said it moved the conference to Denver worth \$45 million per year to the host city because of Utah politicians' hostility to national monuments, particularly Bears Ears.

Zinke's two-page summary of his review, which again does not identify monuments that should be reduced, is available at:
<https://www.doi.gov/sites/doi.gov/files/uploads/monument-report-summary.pdf>.

DOI reorg may include agency shifts; Tidwell steps down

Secretary of Interior Ryan Zinke predicted recently that the headquarters for BLM, the Fish and Wildlife Service, and the Bureau of Reclamation will be moved from Washington, D.C., to Denver.

In a July meeting with U.S. Geological Survey (USGS) executives Zinke said the transfer would be part of his plan to shift personnel from Washington and regional headquarters to the front lines, according to the publication *E&E News*.

In addition Zinke said he intends to combine management of federal lands via inter-agency joint management areas (JMAs), with leadership of the JMAs shifting among agencies.

The USGS notes said, "There is no target on Denver but it is likely that some Denver employees will move to the JMA locations. Denver will probably have the headquarters for BLM, FWS and BOR."

As for joint management, the notes paraphrase Zinke, "(He) wants to have all DOI field offices report to (JMAs) based on watersheds. Employees would be co-located and functions integrated, there would also be liaison functions. Divide country into 13 regions with a common model for all JMAs. Leadership at the JMA Offices could change or rotate between bureaus in the JMAs. The JMAs will have a focus on operations."

Zinke laid out his goals in a July 21 luncheon with USGS officials, according to notes of that meeting obtained by *E&E News*.

In a related personnel move long-time **Forest Service Chief Tom Tidwell** is leaving that position at the end of the month to retire. Tidwell has had a 40-year career with the Forest Service. Although the Obama administration appointed Tidwell chief in 2009, the Trump administration has kept him on.

Tidwell will be replaced by **Tony Tooke**, the regional forester for the Southern Region of the Forest Service, the Department of Agriculture announced August 21.

Secretary of Agriculture Sonny Perdue said of Tidwell, "From the start, we have relied on Chief Tidwell's experience and counsel, drawing on his years of experience both in the field and in Washington."

Of Tooke, Perdue said, "Tony has been preparing for this role for his whole professional life, and at a time when we face active and growing fires, his transition into leadership will be seamless."

The Wilderness Society, no friend of the Trump administration, had positive words on Tooke. "Tooke has a strong record of accomplishment in bringing together diverse interests and forging new partnerships to help the Forest Service meet the many challenges facing our nation's forests," said Mike Anderson, senior policy analyst with the society.

Among other things, Tidwell has repeatedly asked Congress to transfer emergency fire-fighting money to disaster spending to prevent the borrowing of line operations money to fight fires, both during the Obama and Trump administrations. That borrowing costs the agency hundreds of millions of dollars per year.

As for the Interior Department reorganization, how much say Congressional appropriations and authorizing committees would have is not clear.

A department spokeswoman would only say that joint command is a Zinke goal. "The Secretary is drawing his inspiration from the military where they have joint commands," said spokeswoman Heather Swift. "The Secretary would like to see federal lands management agencies work together more cooperatively to deliver management decisions. He prefers to see all agencies involved in an area working together to make sure trails meet, land and wildlife is cohesively managed, and that the federal government is a good neighbor and partner."

Earlier this year the Interior Department transferred as many as 50 employees out of their former jobs, many of them in the Senior Executive Service (SES). A follow-on transfer is widely expected.

Congressional Democrats didn't react kindly to the first round of transfers. Rep. Chellie Pingree (D-Me.) offered an amendment to a fiscal year 2018 Interior and Related Agencies appropriations bill (HR 3354) July 18 that would have required consultation with Congress before such a move.

But the committee rejected the proposal by voice vote after Rep. Ken Calvert (R-Calif.), chairman of the House subcommittee on Interior Appropriations, said personnel details should not be the business of Congress. "It's a terrible precedent for Congress to interfere with the Senior Executive Service," he said.

Besides, he said, the subcommittee had already conducted oversight. "This topic was discussed in each of our subcommittee hearings this year," he said. The full committee then rejected the Pingree amendment by voice vote.

Separately, seven Senate Democrats July 24 asked the Interior Department Inspector General to investigate the transfer of the 50 SES employees. The senators, led by Sen. Maria Cantwell (D-Wash.), said, "Any suggestion that the Department is reassigning SES employees to force them to resign, to silence their voices, or to punish them for the conscientious performance of their public duties is extremely troubling and calls for the closest examination."

The House Appropriations Committee action is but one incident involving dramatic personnel changes launched by the Trump.

As part of the administration's ambitious government-wide program to reduce federal spending, the Interior Department budget calls for an employee reduction of six percent, from 64,000 to 60,000 full-time equivalents. For the Park Service alone the budget would take away 1,242 jobs, reducing the number of full-time equivalent employees from 19,510 to 18,268.

Anent a reorganization Rep. Scott Tipton (R-Colo.) and Sen. Cory Gardner (R-Colo.) introduced legislation (HR 2287, S 1007) in May that would

authorize the transfer of BLM's headquarters from Washington, D.C., to one of 12 western states. The bills would allow the secretary of Interior to choose a new location.

Gardner in the past has suggested a transfer of the headquarters to Grand Junction, Colo. "Moving BLM's headquarters West is a commonsense solution that Coloradans from across the political spectrum support," he said.

But an alliance of BLM retirees said the BLM headquarters should remain in Washington, D.C. The Public Lands Foundation said BLM employees should be in Washington to meet immediately with Congress and other players.

Said foundation president Jesse J. Juen in a June 14 letter to Zinke, "This includes attending impromptu yet critical meetings requiring face-to-face discussions and learning the process of how to be agile, flexible and handle difficult, complex and political discussions and situations related to the day-to-day demands of any administration, Congress, agency, community and partner."

The USGS memo summarizing Zinke's briefing is available at:
https://www.eenews.net/assets/2017/08/15/document_gw_01.pdf.

Zinke sage-grouse policy addresses energy, states' role

Secretary of Interior Ryan Zinke August 7 directed BLM to make fundamental changes to its sage-grouse policy that would at once loosen restrictions on commodity users and defer to state policies.

In a memo to the Interior Department Zinke identified the substantive changes he wants BLM to make in sage-grouse management plans the bureau adopted in 2015. Those changes are based upon recommendations Zinke received from an interagency sage-grouse review team.

High on Zinke's list is direction to "Modify or issue new policy on fluid mineral leasing and development" and "Work with the States to improve techniques and methods to allow the States to set appropriate population objectives."

To carry out Zinke's orders BLM will have to conduct a lengthy revision of 98 land use plans that it developed in association with the Forest Service.

When BLM and the Forest Service finalize those changes environmentalists are sure to pounce with lawsuits. (Two states Idaho and Utah already have lawsuits on the table against the Obama plans.)

For now in a preliminary move the Center for Biological Diversity on August 9 filed a Freedom of Information Act request for all records applicable to the sage-grouse review team's work. The center said it wanted to find out who was calling the shots on the review teams.

Randi Spivak, the center's public lands program director, said Zinke's team is "undermining years of bipartisan cooperation and scientific study to cater to fossil fuel companies and other extractive industries. The public

is entitled to know who's influencing Zinke in his closed-door review process."

If environmentalists object to the Zinke order and the review team, the livestock industry welcomed both. "During an initial review of the report, I was encouraged by several key priorities including the compatibility of proper grazing management and conservation," said Public Lands Council President Dave Eliason.

"The report acknowledges the need for a more collaborative approach between grazing permittees and federal leadership, as well as a reexamination of the Habitat Objectives Table and its application - both key elements to successful conservation efforts for the Greater Sage Grouse," he said.

Separately on the sage-grouse front the Interior Department proposed a big \$11.5 million reduction in BLM's budget for sage-grouse management in fiscal year 2018. However, the House Appropriations Committee July 18 approved the same appropriation for sage-grouse management for fiscal 2017 as in fiscal 2018 - \$60.9 million in a fiscal 2018 spending bill (HR 3354).

For now the Zinke memo of August 7 to the Interior Department is carrying the ball.

Participating in the review were representatives from BLM, the Fish and Wildlife Service, the Forest Service, the U.S. Geological Survey, and a Western Governors Association sage-grouse task force.

The western governors are not united in their demand for wholesale changes in the 98 plans. On May 26 Wyoming Gov. Matt Mead (R-Wyo.) and Colorado Gov. John Hickenlooper (D-Colo.) wrote Zinke and asked him NOT to change course.

At the same time the House Appropriations Committee would maintain spending on the sage-grouse it would also forbid the Fish and Wildlife Service from listing the bird as threatened or endangered under the Endangered Species Act.

Currently the greater sage-grouse is governed by the BLM and Forest Service land use plans, plus state plans, but is not proposed for listing under the ESA. Although there is the slimmest chance that the Trump administration would attempt to list the sage-grouse, House appropriators are taking no chances.

The Obama administration sage-grouse policy, issued on Sept. 22, 2015, did not list the greater sage-grouse as an endangered or threatened species as western states had feared. Instead, it directed BLM and the Forest Service to implement 98 records of decisions to protect the bird. The plans apply to 67 million acres across 10 western states.

The review team report is cautious in recommending policy changes, suggesting that each attempt to increase energy development or state participation would protect the greater sage-grouse.

For instance, on increasing development in priority habitat management areas the report said, "For waiver, exception, and modification language for PHMA stipulations, options include investigating opportunities to provide additional waivers, modifications, and exceptions through policy or potential

plan amendments, while adequately addressing the threats in the area, avoiding habitat loss or fragmentation, and ensuring effective and durable conservation, while providing for economic development."

Similarly on allowing states to set population goals for the sage-grouse the review team said, "In support of setting population targets, the DOI Team recommends support for developing tools and techniques to estimate and set population objectives, including (1) a State/Federal/academic partnership that is working to develop and refine techniques to better estimate range-wide populations over the next two years; and (2) USGS-supported research to improve the ability to find new leks, understand the percent of leks not counted because they are unknown, and increasing the accuracy of counts once leks are detected."

The report is available at:
https://www.doi.gov/sites/doi.gov/files/uploads/so3353_memo_coverletter_report_080717.pdf.

Full appeals court says EPA must repropose methane rule

A federal circuit court last month rejected an attempt by EPA to postpone implementation of a methane emissions rule that is a counterpart to a BLM methane emissions rule.

By a 9-to-2 vote the U.S. Circuit Court for the District of Columbia upheld July 31 a three-judge panel decision ordering EPA to start over before changing the rule, including public notice, public comment and a formal rewrite. The circuit court gave no reason for its decision, simply issuing a one-page order upholding the three-judge decision.

The circuit court decision may serve as a precedent to counter attempts by the Interior Department to stay some provisions of BLM's own methane rule of Nov. 18, 2016. BLM said the Western Energy Alliance had justified a stay in implementing those provisions by objecting to the "regulatory uncertainty" of them. BLM has stayed portions of the rule dealing with leakage detection, storage tanks and pneumatic device provisions.

There is already litigation underway against the Obama administration BLM methane rule, brought by the energy industry. On January 16 U.S. District Court Judge Scott W. Skavdahl in Wyoming refused for now to halt implementation of the rule. He held that industry plaintiffs, including the Western Energy Alliance, had not yet proved they would be harmed by the regulation.

Separately, 17 national and local environmental groups filed a second, very different lawsuit in U.S. District Court for Northern California July 10 arguing the Administrative Procedures Act (APA) also forbade BLM from delaying its methane emissions rule.

In the EPA case, the agency had delayed implementation of the methane emissions rule for 90 days. EPA had argued that it had broad discretion to revisit its own rules under the Clean Air Act.

But in a two-to-one decision the Tenth Circuit July 3 held that the APA forbids agencies from delaying a rule without a formal rulemaking procedure.

"Agencies obviously have broad discretion to reconsider a regulation at any time. To do so, however, they must comply with the (APA), including its requirements for notice and comment," said the court majority.

The court continued, "EPA's stay, in other words, is essentially an order delaying the rule's effective date, and this court has held that such orders are tantamount to amending or revoking a rule."

Signing off on the majority rule were Judges David S. Tatel (a President Clinton appointee) and Robert Leon Wilkins (an Obama appointee).

In a dissent Judge Janice Rogers Brown (a President George W. Bush appointee) said EPA had authority to delay implementation of the rule because a delay does not change a rule.

"EPA is not compelling compliance here," she argued. "If a regulated entity wants to comport its conduct to the requirements of the stayed rule, it is free to do so. By issuing the stay, all the EPA has indicated is that it will not, legally or practically, enforce the rule under reconsideration. The stay's consequences therefore do not impose legal or practical requirements on anyone - separating them from the kind of consequences encompassed by 'final agency action.'"

Because there is no final agency action, she concluded, there is no justiciable action for the court to consider and EPA's delay should continue.

Environmental group plaintiffs in the EPA suit, including the Sierra Club, declared victory after the full circuit upheld the three-judge panel. "Donald Trump and (EPA Administrator) Scott Pruitt's attempt to delay the implementation of these crucial protections had no basis in law, and we are glad to see their effort to do the bidding of the fossil fuel industry fail," said Sierra Club Chief Climate Counsel Joanne Spalding.

The Tenth Circuit decision is available at:
[https://www.cadc.uscourts.gov/internet/opinions.nsf/A86B20D79BEB893E85258152005CA1B2/\\$file/17-1145-1682465.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/A86B20D79BEB893E85258152005CA1B2/$file/17-1145-1682465.pdf).

The big question now is, does the court ruling on EPA's methane rule set a precedent for separate BLM energy rules that may or may not be suspended/delayed by the Trump administration?

On June 14 BLM delayed the implementation of ten or so provisions of the Nov. 26, 2016, methane rule. That is the subject of the July 10 environmentalist lawsuit.

BLM and EPA announced separate rules in early June to postpone key elements of methane emissions rules for two years. As justification, BLM invoked a provision of the APA that authorizes agencies to postpone the implementation of new rules when petitioners give good cause.

In this instance BLM said June 15 the Western Energy Alliance had justified the delay of its Nov. 16, 2016, rule by objecting to the "regulatory uncertainty" of provisions dealing with leakage detection, storage tanks and pneumatic device provisions.

Other provisions that BLM is already implementing, such as development of a waste minimization plan, royalty free use of production, definitions of

unavoidably lost and avoidably lost, limits on drilling and flaring, and downhole maintenance will continue in place, BLM said.

ONRR revokes fossil energy royalty rule, despite suit

The Office of Natural Resources Revenue (ONRR) August 7 revoked an Obama administration coal, oil and gas royalty valuation rule, effective September 6.

Despite a lawsuit from two states that argues ONRR does not have authority to outright revoke the rule, the office said it was forced to act because the fossil fuel energy industry objected to several provisions in the Obama rule. Among other things the oil and gas industry objected to a "default" provision that would allow ONRR to use alternative standards to value product.

Said Secretary of Interior Ryan Zinke, "The increased costs associated with the Valuation Rule had the potential to decrease exploration and production on Federal lands, both onshore and offshore, making us rely more and more on foreign imports of oil and gas."

But the attorneys general of New Mexico and California, major players in the public lands energy production game, have already filed a lawsuit against ONRR for an earlier agency action suspending the Obama rule. The states and other groups will almost certainly extend their legal action to the September 6 rule revoking the Obama regulation outright.

The states argue, as have Congressional Democrats, that ONRR has no authority to delay implementation of a regulation once it has been instituted.

Said ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) of the August 7 revocation, "The Interior Department admits it is giving away up to \$750 million over a decade to private companies making profits on a public resource. Suspending this rule was not lawful in the first place, and this repeal violates Interior's obligation to ensure a fair return to taxpayers."

In its July 1, 2016, rule the Obama regulations replaced an old standard that applied (and would apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

Before cancelling the Obama rule, the Trump administration took two steps to block implementation. On February 22 ONRR postponed implementation and on April 4 it proposed outright repeal of the rule, combined with a solicitation of comments on a new proposed rule.

Zinke received important endorsements of the ONRR cancellation action. Said Senate Energy Committee Chairman Lisa Murkowski (R-Alaska), "While the federal government will continue to collect its fair share of revenues from responsible development, the repeal of this rule will help prevent negative impacts to exploration and production that would put our energy dominance at stake."

And the Congressional Western Caucus backed the ONRR action, "This burdensome new regulation would have bankrupt small businesses, discouraged responsible energy production and hit the pocketbooks of hard-working American families."

But the Western Organization of Resource Councils disagreed, saying the rule would actually cost local communities. Said Steve Charter on behalf of the councils, "The administration is rolling back important taxpayer protections with the claim that they 'burden' industry. In reality, it is our local governments and schools that will be burdened by the loss of revenue. Fossil fuel companies will pay \$60 million to \$75 million less each year for mining and drilling taxpayer-owned coal, oil and gas."

In its August 7 rule ONRR laid out several provisions in the Obama regulation that industry had faulted. High on the list was a provision that would allow ONRR to substitute different valuation rules when it identified problems in a company's reporting.

ONRR said that the Obama proposal was intended to be invoked in limited situations such as "when a lessee engages in misconduct, when a lessee breaches its duty to market, or any other situation that compromises our ability to reasonably determine the fair market value of the oil, gas, or coal."

But, said ONRR, "because we described those circumstances so broadly, without limits or meaningful guidance, the rule created more confusion and uncertainty than it resolved."

In addition ONRR said coal companies objected to a provision allowing for the valuing of coal on the sale price of electricity.

Said ONRR, "For example, lessees argued that valuing coal based on the first arm's-length sale of coal as electricity is a difficult task because the sale price of electricity does not reflect the value of coal in a simple, predictable fashion - electricity markets are too diverse and complex to trace electricity prices back to the lease."

Wildfire funding patch promoted in flood insurance bill

Just before leaving on a month-long summer vacation in early August senators began to address wildfire policy, with varying proposals.

Most prominently, Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) said of broad policy, "What we need is a comprehensive solution that addresses both wildfire budgeting and forest management. We need to tackle both of those, at once, because we know the wildfire problem is not just a budgeting problem - it's also a management problem."

Shortly after Murkowski's call to arms at a committee hearing August 3, four senators proposed a solution to the wildfire budget problem called fire borrowing. The senators, including Sen. Jim Risch (R-Idaho) and Ron Wyden (D-Ore.), asked the Senate Banking Committee to include a solution in a flood insurance bill (S 1571).

"Fixing the broken system of wildfire funding through the National Flood Insurance Program Reauthorization Act of 2017 will ensure that federal

agencies have the stable funding they need to not only fight wildfires but also complete forest health projects that will reduce the risk and severity of future fires," said Risch and Wyden.

The provision in S 1571 would authorize the transfer out of appropriations bills emergency wildfire costs greater than the 10-year average. It would do that by designating emergency wildfires as major disasters under the national disaster relief law. Such disasters are paid for outside appropriations bills.

S 1571, introduced by Sen. Banking Committee Chairman Mike Crapo (R-Idaho) July 17, is primarily intended to reauthorize for six years a National Flood Insurance Program.

Risch and Wyden wrote, "We write to strongly urge you to ensure this provision remains in the final bill as it is considered by the Committee and in the full Senate."

But, as Murkowski noted, wildfire funding is not the only problem with the nation's emergency wildfire program, prevention of fires in the first place is necessary.

And that's where the politics gets complicated. The House Natural Resources Committee June 27 approved broad legislation (HR 2936) by a 20-to-12 vote that not only authorizes a disaster cap for emergency wildfire costs but also speeds environmental reviews of timber sales. But many Democrats and environmentalists contend that those speedy reviews are environmentally unsound.

As was the case last year the House committee bill is certain to provide a negotiating position this year for Republicans (and a handful of Democrats) in jockeying for new wildfire legislation.

The bill from Rep. Bruce Westerman (R-Ark.) was cosponsored by seven Republicans and two Democrats Reps. Rick Nolan (D-Minn.), Collin Peterson (D-Minn.)

In a separate initiative a bipartisan coalition of House members introduced legislation (HR 2862) June 8 that would place a disaster cap on wildfire funding, without altering timber sales procedures.

The measure under lead sponsor Rep. Mike Simpson (R-Idaho) would transfer emergency wildfire expenses greater than the 10-year average out of discretionary appropriations and into disaster spending.

So, if the Senate Banking Committee doesn't include the fire borrowing provision in the flood insurance bill, Murkowski's energy committee may be forced to pick up the ball.

Murkowski pointed to a discussion draft proposal she and several other senators from both political parties - including Crapo, Risch and Wyden published last year. That sketchy outline calls for the disaster funding cap as well as unspecified steps to accelerate hazardous fuels projects.

Forest Service Chief Tom Tidwell has promised to work on the legislation with Congress. That promise was reinforced at the August 3

Senate hearing by Forest Service witness Victoria C. Christiansen, deputy chief for state and private forestry.

"We are committed to working with Congress to develop a solution that addresses the growth of fire programs as a percent of the agency's budget, and also ends the practice of transferring funds from non-fire programs when suppression funds fall short before the end of the fiscal year," she said.

Tidwell announced last week that he is retiring at the end of this month.

At press time federal, state and other fire fighters were combatting more than 40 large fires over more than 500,000 acres. The leading states were Oregon (12 fires) and Montana (11 fires).

Thus far this year the fire season has been more severe than the ten-year average in acres burned. Already, more than 6.5 million acres have burned compared to an average of just over 5 million acres. Last year at this time just 4.3 million acres had burned.

Whether Congress has put up enough money in a fiscal year 2017 appropriations bill (PL 115-31 of May 5) to pay for this summer's fire season remains to be seen. Congress appropriated just over \$4 billion for the Forest Service (\$3.175 billion) and the Interior Department (\$1.007 billion) for wildfire expenses. Those totals include \$407 million for emergency wildfires.

Enviro apply full-court press against O&G development

The Trump administration's campaign to increase oil and gas development on the public lands is being met by an expected campaign from environmentalists to block it.

The Trump campaign is laid out in a July 6 executive order from Secretary of Interior Ryan Zinke directing BLM to make sure each state office holds quarterly oil and gas lease sales and identifies impediments to swift processing of applications for permit to drill (APDs).

Thus far environmentalists are putting their energy into slowing (or preventing) the leasing of oil and gas in the usual Rocky Mountain States Wyoming, Utah, Montana, New Mexico and Colorado.

Most recently the WildEarth Guardians environmental group took aim at planned December oil and gas lease sales in Montana (98,000 acres from 104 tracts) and New Mexico (2,100 acres.) The group asked its members to object to the sales because of possible adverse environmental impacts from hydraulic fracturing.

"In Montana, the iconic plains of the Powder River Basin are in industry's crosshairs," the group warned its members. "And in New Mexico, the Guadalupe Mountains and Carlsbad Caverns National Park are all facing increased pressure from fracking."

That's just the tip of the iceberg. Environmentalists are also setting the stage for legal action against recent and upcoming oil and gas lease sales in Wyoming and Utah.

Perhaps most controversially BLM has prepared environmental assessments backing a December sale of nearly 100,000 acres in northeastern Utah. The Southern Utah Wilderness Alliance says the tracts are too close to the San Rafael Swell, the Book Cliffs, and Dinosaur National Monument.

"This ill-advised proposal would, among other things, green-light oil and gas development right next to the (Dinosaur) monument, including along the primary access route travelled by thousands of visitors annually," complained the alliance.

Similarly, WildEarth Guardians last month objected to a BLM proposal to sell 45 oil and gas parcels totaling 57,075 acres in March 2018 in proximity to the new Bears Ears National Monument. Zinke has already put out the word that he will recommend that President Trump reduce the size of the monument.

Said the Guardians in a July 27 letter to BLM, "A large number of the proposed lease parcels are directly adjacent or in close proximity to the southeastern corner of Bears Ears National Monument." Rebecca Fischer, climate guardian for the group, signed the letter.

Behind those guerrilla war efforts lies a broader environmentalist lawsuit filed in June that challenges oil and gas leases sold by the Obama administration in 11 sales covering 463,553 acres in Wyoming, Utah and Colorado. The suit says simply that BLM failed to consider the greenhouse gas impacts of the development resulting from those sales.

That lawsuit is available at
https://climatewest.files.wordpress.com/2017/07/westwide-msj_memo_doc-55.pdf.

In July Zinke in an executive order directed BLM to hold quarterly oil and gas lease sales. BLM state offices usually do try to hold quarterly sales but sometimes postpone the events because of complications due to NEPA and ESA protests. He also directed BLM to identify obstacles to swift processing of applications for permit to drill.

What steps BLM can take to expedite permits are unclear because the bureau must comply with the National Environmental Policy Act and the Endangered Species Act, among other laws, prior to approving permits. And that takes time.

The Obama administration did take one huge step that it said would speed APD and lease approvals processing paperwork electronically. Late last year it began holding lease sales electronically instead of through in-person bidding.

Then on February 7 the Trump administration published an Obama administration-generated rule that makes online filing of APDs the standard procedure, subject to some exceptions. Those two electronic moves may speed both the processing of lease nominations and the processing of APDs.

Rep. Diane Black (R-Tenn.) has a different strategy turn oil and gas leasing and permitting over to states that have an established program. Her bill (HR 3565) introduced July 28 would allow states to apply to conduct an oil and gas program.

DOI review of rules conducted on case-by-case basis

In its campaign to reverse/revise Obama administration public lands rules, the Trump administration is deploying varying strategies to avoid lengthy delays in preparing new rules. But those strategies face a barrage of lawsuits.

On paper existing rules can't be unilaterally reversed, just like that. Nevertheless, the department says that a number of authorities, such as court decisions and industry objections, do authorize quick reversals. Here are four possibilities:

On August 7 the Office of Natural Resources Revenue (ONRR) outright revoked an Obama administration oil, gas and coal royalty valuation rule of July 1, 2016. ONRR said it had such authority because the oil and gas and coal industries objected to the regulation.

Second, Congress on March 27 revoked a BLM planning 2.0 rule of Dec. 12, 2016 (PL 115-12), using its authority under the Congressional Review Act (CRA).

Third, on March 29 Secretary of Interior Ryan Zinke canceled a coal-leasing moratorium imposed by former Secretary of Interior Sally Jewell in January 2106.

Finally, BLM is proceeding to cancel outright a hydraulic fracturing rule because a court has held the rule was invalid.

There is a huge legal risk. Notably, a federal circuit court July 31 rejected an attempt by EPA to postpone implementation of a methane emissions rule that is a counterpart to a BLM methane emissions rule. By a 9-to-2 vote the U.S. Circuit Court for the District of Columbia upheld a three-judge decision ordering EPA to start over with public notice, public comment and a formal rewrite before changing the rule.

So for some rank-and-file regulations BLM and the Fish and Wildlife Service (FWS) may have to follow standard regulatory procedure and propose (as they have begun to do) rescissions or revisions to regulations, take public comment and then post final decisions.

One veteran public lands attorney with the Holland & Hart law firm said the administration will address rule changes on a case-by-case basis. "It's always a mixture," said William Myers, former Interior Department solicitor under President George W. Bush. "There are some instances where the department would have to be in compliance with FLPMA and NEPA. There are other cases where the department can issue secretarial orders and BLM can change its instruction manual. But where one starts and one stops there is not a bright line."

FLPMA Is the Federal Land Policy and Management Act and NEPA is the National Environmental Policy Act.

Meanwhile, environmentalists are already litigating attempts to block Obama administration hydraulic fracturing and methane emissions rules. And they promise to contest other actions in court. In addition the states of

New Mexico and California have filed suit against the ONRR oil, gas and coal royalty postponement.

Said Holland & Hart's Myers, "I think there is a lot of thumping of the table by groups concerned about which way the administration is going. It's quite routine when there is a change of administrations that the new administration conducts a broad-brush policy review."

President Trump started the ball rolling toward the revocation/revision of many public lands rules March 28 when he directed the Interior Department to terminate the coal-leasing moratorium and to begin work on reversing oil and gas regulations governing hydraulic fracturing, methane emissions, oil and gas development in national parks, and oil and gas development in national wildlife refuges.

Secretary Zinke immediately terminated the coal-leasing moratorium and ordered BLM to begin reversing the oil and gas regulations.

On July 20 the Trump administration's Office of Information and Regulatory Affairs published a list of 860 Obama administration regulations it has targeted for cancellation or replacement. The list is available at: <https://www.reginfo.gov/public/do/eAgendaMain>.

The list of Interior Department rules on the chopping block is here: <https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION GET AGENCY RULE LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1000&Image58.x=41&Image58.y=22>. The list contains negligible proposals for the Forest Service.

The Trump administration is targeting these public lands policies, among others:

Hydraulic fracturing: BLM made it official July 25: It will attempt to cancel outright a hydraulic fracturing rule of March 2015, instead of rewriting it.

The bureau said it does not intend to write a new regulation because other federal regulations and state standards adequately govern the practice.

In addition BLM suggested that it had authority to simply cancel the 2015 rule because the U.S. District Court in Wyoming set the rule aside in a June 21, 2016, decision. So if the rule never went into effect, BLM inferred, the bureau could simply cancel it.

On June 21, 2016, U.S. District Court Judge Scott W. Skavdahl in Wyoming blocked implementation of the regulation. Although Judge Skavdahl set aside the rule, his decision is now under appeal to the Tenth U.S. Circuit Court of Appeals. The circuit took oral testimony on the rule July 26.

The BLM rule of March 26, 2015, was not subject to a Congressional repeal resolution because it was issued before the deadline for filing such resolutions.

The rule would have companies (1) validate well integrity and cement barriers, (2) disclose chemicals used in fracking shortly after completing operations, (3) follow stiffer standards on storage of waste fluids and (4)

submit more detailed information on the geology and location of existing wells.

Methane emissions: On June 15 BLM proposed a stay of several provisions of a methane emissions rule completed by BLM on Nov. 18, 2016. BLM said the Western Energy Alliance had justified the delay of the rule by objecting to the "regulatory uncertainty" of provisions dealing with leakage detection, storage tanks and pneumatic devices. (See related article page 7.)

Other provisions that BLM is already implementing, such as development of a waste minimization plan, royalty free use of production, definitions of unavoidably lost and avoidably lost, limits on drilling and flaring, and downhole maintenance will continue in place, BLM said.

There is already litigation underway against the Obama administration's BLM methane rule. On January 16 Judge Skavdahl refused for now to halt implementation of the BLM rule. He held that industry plaintiffs, including the Western Energy Alliance, had not yet proved they would be harmed by the regulation.

However, Skavdahl was skeptical of BLM's argument that the rule is designed to prevent waste, i.e. methane venting, and not to assume EPA's clean air responsibility. The oil and gas industry argue in their suit that BLM has no authority over Clean Air Act regulation; only EPA does. Said the judge, "The Court questions whether the 'social cost of methane' is an appropriate factor for BLM to consider in promulgating a resource conservation rule pursuant to its [Mineral Leasing Act] authority."

BLM planning: Congress took care of this one it passed a resolution under the CRA that, when signed into law by President Trump, revoked a BLM planning 2.0 rule of Dec. 12, 2016. The White House Office of Information and Regulatory Affairs says the President's signature on the resolution automatically replaces a *Federal Register* notice and sends policy back to pre-Obama planning rules.

The 2.0 planning rule revised the substance of a previous planning rule by among other things emphasizing areawide planning, requiring an assessment prior to the writing of a management plan and involving the public earlier in the planning process.

Of importance once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" similar to the old one.

BLM's existing planning rules posted in 1979, 1983 and 2005 - guide the management of public lands, as required by the Federal Land Policy and Management Act of 1976.

Oil & gas & coal valuation: On August 7 ONRR revoked an Obama administration oil, gas and coal royalty rule of July 1, 2006. (See related article page 9.)

Despite a lawsuit from two states that argues ONRR has no authority to outright revoke the rule, the office said it was taking the action because the fossil fuels energy industry objected to several provisions of the Obama rule. Among other things the oil and gas industry objected to a "default" provision that allowed ONRR to use alternative standards to value product.

The department's target is an Obama administration rule that sought to replace an old standard that applied (and may apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

The States of California and New Mexico have filed a lawsuit against the delay in implementation of the Obama rule. They argue, as have Congressional Democrats, that ONRR has no authority to delay implementation of a regulation once it has been instituted.

ESA grizzly bears: Following the lead of the Obama administration, the Trump administration said June 22 it will delist the Yellowstone population of the grizzly bear under the Endangered Species Act.

Absent a court order and one will surely be requested management of the Yellowstone bear will be turned over to the States of Wyoming, Montana and Idaho. The grizzlies that stay within the borders of Yellowstone National Park will be managed by the Park Service and will be subject to state rules only if they leave the park.

FWS published a grizzly bear recovery plan in 1993. FWS first delisted the Yellowstone population in 2007 but a federal judge vacated that action. In March 2016 the Obama administration repropose delisting.

Sage-grouse plans: Zinke on August 7 directed BLM to make fundamental changes to its sage-grouse policy that would at once loosen restrictions on commodity users and defer states. (See related article page 5.)

In a memo to the Interior Department Zinke identified the substantive changes he wants BLM to make in sage-grouse management plans the bureau adopted in 2015. Those changes are based upon recommendations Zinke requested from an interagency sage-grouse review team.

To carry out Zinke's orders BLM will have to conduct a lengthy revision of 98 land use plans that it developed in association with the Forest Service. When BLM and the Forest Service execute those changes environmentalists are sure to pounce with lawsuits.

Coal moratorium: on March 28 President Trump issued a sweeping executive order that directed the Interior Department to terminate a coal-leasing moratorium declared by former Secretary of Interior Sally Jewell in January 2016. (See following article.)

Zinke the next day issued an executive order of his own Secretarial Order 3348 that terminated the moratorium.

The Trump administration does not believe the prior work done on an EIS by the Obama administration requires continuation of that work, or an EIS to back a reversal.

Environmentalists immediately filed a lawsuit arguing that the Trump administration should prepare an EIS before cancelling the moratorium. The Earthjustice law firm is leading the lawsuit on behalf of seven conservation groups.

Coal lease application stopped by moratorium is back

BLM late last month took an initial step toward leasing a coal tract that had been frozen by an Obama administration moratorium on new coal development on public lands.

The bureau posted a notice of intent to prepare an EIS on the possibility of leasing 441 million tons of coal in the West Antelope 3 Coal Lease by Application. Antelope Coal LLC applied for the lease on Aug. 24, 2015.

On January 15, 2016, then Secretary of Interior Sally Jewell famously declared a ban on development of 32 tracts until a policy review was completed. The ban did allow for environmental documentation to proceed.

On March 28 of this year Secretary of Interior Ryan Zinke ended the moratorium in order to support President Trump's campaign to increase fossil fuels energy development on the public lands.

Issuance of a lease and approval of a mining plan for West Antelope 3 are still a long way off. If BLM does approve a lease and the Office of Surface Mining approves a mining plan, the lease will become part of the ongoing (and huge) Antelope Mine near Gillette, Wyo., in the Powder River Basin.

Hanging over the coal industry nationally has been a loss of market share to natural gas and renewable energy. The parent company of Antelope Coal, Cloud Peak Energy Inc., said as of June 30 the company had lost \$27.1 million thus far this year. However, the company said shipments increased in the second quarter by 21 percent "as the industry environment continued to improve."

The public lands coal industry was in the bulls-eye during the Obama administration as Senate Democrats teamed with environmentalists to demand an end to any more coal leasing on the public lands.

In fact Sen. Jeff Merkley (D-Ore.) and seven of his colleagues have reintroduced this year legislation (S 750) called the Keep-It-In-the-Ground Act that would forbid the issuance of any new leases on the public lands. That ban would also apply to oil, gas and oil shale.

Under BLM's coal leasing procedure a Powder River Regional Coal Team must first recommend that BLM process a coal lease application. That recommendation for Antelope 3 was handed down on Jan. 27, 2016. The West Antelope 3 Coal Lease extends over 3,508.31 acres on private land with public lands coal in the subsurface.

BLM says it will accept comments on the project until September 26 at blm_wy_west_antelope_3@blm.gov. The bureau asks commenters to insert "West Antelope 3 Coal EIS Scoping Comment" in the subject line.

Time for money bill short; Senate doesn't have budget

The Senate adjourned for a month-long summer vacation August 3 without addressing a fiscal year 2018 Interior and related agencies appropriations bills.

Compounding the Senate's upcoming problems in September when it attempts to move the Interior bill and other spending bills, the Senate has no guiding budget. And, apparently, Republican leaders have given up on writing such a budget.

So with only days left before fiscal 2018 begins October 1, the Senate, House and the Trump administration will be up against it in fashioning final fiscal 2018 money bills. Thus, the betting now is that Congress will once again extend existing spending levels for several months to give itself time to write appropriations bills.

Even without a guiding budget the Senate Appropriations Committee on its own July 20 set up a titanic battle for later this year by approving a spending ceiling for the Interior bill that is \$600 million more than a House Appropriations Committee level, and almost \$5 billion more than a Trump administration request.

In contrast with the Senate the House Appropriations Committee July 18 did approve its version of a fiscal year 2018 Interior and related agencies spending bill (HR 3354) and cleared the measure for House floor action.

Although the rider-packed House committee bill would not go nearly as far as the Trump administration requested in reducing domestic spending for fiscal 2018, the ceiling of \$31.4 billion is \$800 million less than a fiscal 2018 appropriation of \$32.2 billion.

The Trump administration had recommended \$4.3 billion less than the subcommittee number, or \$27.1 billion. The Senate Appropriations Committee approved a ceiling of \$32 billion, again that is \$600 million more than in the House committee's HR 3354.

The House Appropriations Committee July 18 in its mark-up rejected several major Democratic amendments, including a major one that would have struck a rider from the bill that would ban any work on listing any wolf subspecies under the Endangered Species Act.

Wild horse rider: The House committee did accept by voice vote a significant amendment from Rep. Chris Stewart (R-Utah) that would authorize the disposal of wild horses and burros that BLM deems to be surplus.

In defending the amendment subcommittee on Interior appropriations chairman Ken Calvert (R-Calif.) argued, "The amendment only allows the humane euthanizing of unadopted horses and burros, just as we do for unadopted dogs and cats. This amendment does not allow horses and burros to be sold for processing for commercial products for consumption."

But Rep. Debbie Wasserman Shultz (D-Fla.) said, "This amendment would allow the cruel and inhumane practice of large-scale euthanasia of wild horses and burros. It's as simple as this: Americans overwhelmingly oppose the extermination of wild horses."

Wild horse advocates also protested. Said Suzanne Roy of the American Wild Horse Campaign, "Let's be clear: House Appropriations Committee members just signed a death warrant for America's mustangs and it will lead to the wholesale destruction of these irreplaceable national treasures."

The Trump administration first touched the third rail of wild horse management May 23 in releasing its fiscal year 2018 budget request it proposed the sale of excess animals for slaughter. How the Trump proposal fits in with the Stewart amendment is not clear, but both would authorize disposal of a large number of the 70,000 wild horses and burros on the public range. The range only has a carrying capacity of 26,000 animals, according to Stewart.

On the money front for BLM resource management and the National Forest System the House Appropriations Committee approved modest decreases. For BLM resource management the committee approved a decrease of \$20 million, from \$1.095 billion in fiscal 2017 to \$1.075 billion in fiscal 2018. For the National Forest System the committee also approved a decrease of \$20 million, from \$1.513 billion in fiscal 2017 to \$1.493 billion in fiscal 2018.

The committee allocations for some public lands programs were a little higher than those numbers would at first suggest, because the panel reduced allocations for federal land acquisition under the Land and Water Conservation Fund. Thus the National Forest System allocation actually increased by a small amount outside of land acquisitions.

As has become customary, wildfire suppression ate up a significant portion of the subcommittee's \$31.4 billion allocation, \$3.4 billion, or about 11 percent of the total. And the committee did not act on recommendations that it attempt to shift emergency wildfire costs out of the bill and into disaster funding.

The committee set aside \$465 million for the payments-in-lieu of taxes (PILT) program, which Congress has occasionally paid for outside of appropriations bills. The \$465 million matches the fiscal 2017 appropriation. The Trump administration had recommended \$397 million for PILT.

The amendments/riders in the bill include such things as a ban on implementing a wetlands regulation; a ban on listing the greater sage-grouse as threatened or endangered under the Endangered Species Act; and a ban against delisting of the gray wolf in Wyoming.

The legislation would also ban the listing of any wolf species in the lower 48 states as threatened or endangered under the Endangered Species Act (Section 117).

That blanket ban would forbid the use of funds to "treat" any wolf species as threatened or endangered under the act, including the Mexican gray wolf. The Fish and Wildlife Service June 30 proposed a new recovery plan for the endangered Mexican gray wolf that anticipates a future population in the Southwest of the United States of 320 wolves, plus 170 in Mexico. The population of the lobo, the most endangered of the wolf subspecies in the world, is currently 130 in Arizona and New Mexico.

Senate energy bill may have to wait in line this fall

There is no indication of revenge, but Senate Republican leaders have not yet made time available for Sen. Lisa Murkowski's (R-Alaska) signature energy bill (S 1460).

And when Congress returns to work next month, it will be faced with a loaded agenda with appropriations bills and tax reform the top priority. So the window that opened early this month to slip the energy bill through the Senate presented perhaps the best chance of moving S 1460, and that window is now closing.

The bill has been on the Senate agenda since Murkowski and ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) introduced it on June 28.

But then came Murkowski's fateful late July votes against legislation to replace/revise the Obama administration's Affordable Care Act. It has been suggested that President Trump and Secretary of Interior Ryan Zinke put great political pressure on Murkowski and threatened revenge.

That revenge, theoretically, could come in the form of damping down energy development in the National Petroleum Reserve Alaska and the coastal plain of the Arctic National Wildlife Refuge. However, the development is also a signal ambition of the trump administration, which may not want to cut off its nose to spite its face.

In addition the health care vote was Senate Majority Leader Mitch McConnell's (R-Ky.) top priority and he may be tempted to exact his own revenge on Murkowski. But Senate comity argues against it.

The contretemps between Murkowski and the administration cuts both ways what with the Interior Department dependent on Murkowski on all sorts of issues, from energy development to confirmation of nominees.

Murkowski did cancel a scheduled July 27 hearing on the nomination of former Texas Comptroller Susan Combs as assistant secretary of Interior for Policy.

Murkowski chairs both the Senate Energy Committee and the Senate subcommittee on Interior appropriations.

While the energy bill from Murkowski and Cantwell addresses in the first instance energy, it contains few provisions dealing with onshore energy production.

It does, however, contain major conservation provisions such as making permanent the Land and Water Conservation Fund, establishing a Park Service maintenance fund, making permanent the National Historic Preservation Fund and approving 60 individual Forest Service, BLM and Park Service management bills.

A predecessor energy bill in the last Congress was under serious consideration by the House and Senate late into December, but eventually failed. A matching House measure would also have added provisions to expedite timber sales and to accelerate hard rock mining permits.

House committee leaders are reportedly ready to assemble an energy bill of their own. House Republican leaders have far more leeway than their Senate counterparts in quickly moving legislation.

The Senate bill contains one provision with some potential to expedite applications for permit to drill (APDs) for oil and gas on the public lands.

The provision, advanced by Sen. John Hoeven (R-N.D.), would authorize a pilot program in one state (presumably North Dakota) to study ways to accelerate the processing of APDs to meet state standards where (1) less than 25 percent of the minerals in a spacing unit were owned by the federal government and (2) the surface estate was not owned by the federal government.

Outside the energy arena S 1460 also addresses the speed (or lack thereof) of processing hard rock mining permits. The provision would have BLM and the Forest Service "to the maximum extent practicable" establish deadlines for all kinds of permitting decisions for critical minerals.

Last year the Senate approved its version of the energy bill on April 12, 2016, by an 85-to-12 margin with broad bipartisan support. The House May 25, 2016, approved its version of the comprehensive energy bill by a 241-to-178 margin.

IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.plnfpr.com/ibla.htm>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

Subject: Grazing rights/preference.

BLM decision: BLM will reject an attempt to transfer grazing preference to a third party.

Administrative law judge: Affirmed BLM because grazing rights were canceled.

Appellant permit applicant: Administrative judge erred because grazing preference remains after grazing rights are terminated.

IBLA decision: Affirmed judge and BLM.

Case identification: *K. John and M. Martha Corrigan, et al. v. Bureau of Land Management*, 190 IBLA 371. Decided August 10, 2017. Twenty-six pages. Interlocutory appeal from an Administrative Law Judge order granting summary judgment to BLM, and ruling that a former permittee's grazing preference and permitted use were extinguished when the permittee's grazing permit expired.

IBLA argument: IBLA Administrative Judge Amy B. Sosin upheld an administrative law judge's decision upholding a BLM decision to deny an application for grazing preference. The applicant sought to obtain the grazing preference formerly held by the Hanley Ranch. BLM had refused to renew the Hanley Ranch grazing permit but the appellant argued that the ranch's grazing preference continued. Held Sosin, "Here, BLM decided not to renew Hanley Ranch's grazing permit. BLM properly did so under the renewal regulation. Appellants' argument that BLM must separately cancel grazing preference is not supported by law and stems from their view - which we have rejected - that grazing preference is an indefinite 'property-based' entitlement." The appellant also argued that Congress in annual appropriations bills had kept alive grazing permits subject to application for renewal, meaning that the Hanley Ranch permit was still alive, despite BLM's decision. Of that argument Sosin held, "Therefore, once the Board affirmed BLM's decision not to renew Hanley Ranch's grazing permit, the permit expired as of February 2012, and BLM properly denied Hanley Ranch's February 2013 application for annual grazing use because its grazing permit had 'terminated by operation of law.'"

Subject: Gold mine plan of operations.

BLM decision: BLM will approve a gold mine plan after preparing an environmental assessment (EA).

Appellant Indian tribe: BLM erred because the mine will have adverse effects on neighboring tribal lands.

IBLA decision: Affirmed BLM.

Case identification: *Confederated Tribes of the Goshute Reservation*, 190 IBLA 396. Decided August 17, 2017. Twenty-eight pages. Appeal from a decision of the Salt Lake (Utah) Field Office of BLM, approving the Kiewit Mine Project in western Tooele County, Utah. U-87834; DoI-BLM-UT-W010-2012-0010-EA.

IBLA argument: IBLA Administrative Judge Amy B. Sosin upheld a BLM decision approving a gold mine plan of operations for the Kiewit Mine Project after preparing an EA. The appellant Indian tribe objected that mining on the 105-acre tract would impair adjacent tribal lands. But Sosin said BLM had prepared an adequate EA and record of decision. "We affirm BLM's decision because the Tribes do not meet their burden to show that BLM committed an error of law, or a material error in its factual analysis," Sosin held. The appellant Consolidated Tribes of Goshute Reservation argued the EA violated the National Environmental Policy Act, the Federal Land Policy and Management Act, the National Historic Preservation Act, and an 1863 treaty between the tribes and the United States.

Notes

DoI nominees still pending. The Interior and Agriculture Departments still lack most key political policy makers, seven months after President Trump was sworn in as President. Most pointedly, perhaps, Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) July 27 canceled a scheduled vote on former Texas Comptroller Susan Combs as assistant secretary of Interior for Policy. At the time Murkowski was in a contretemps with the Trump administration over her vote against a health care bill. The Combs vote has not been rescheduled yet. The committee does have a hearing scheduled for September 7 on the nomination of Joseph Balash to be Assistant Secretary of the Interior for Land and Minerals Management. Balash was Sen. Dan Sullivan's (R-Alaska) chief of staff. Also on the President's ledger Trump on August 1 said he would nominate the general counsel of a wellness company, Ryan Nelson, as Interior Department Solicitor. Nelson has extensive experience with public lands litigation, including a stint as deputy assistant attorney general for the Environment and Natural Resources in the Justice Department. Finally, last month Secretary of Interior Ryan Zinke named the Utah wildlife chief, Greg Sheehan, as acting director of the Fish and Wildlife Service until a director is named and confirmed. No Interior Department agency heads have been nominated yet. For the Department of Agriculture the administration has yet to select a nominee for Under secretary for Natural Resources to oversee the Forest Service. Incumbent Forest Service Chief Tom Tidwell continues to fill that position, but he is retiring at the end of the month.

Montana refuge opened to grazing. Secretary of Interior Ryan Zinke July 31 ordered the Fish and Wildlife Service (FWS) to open the Charles M. Russell Wildlife Refuge for grazing. The refuge will grant grazing privilege to ranchers burned out by the 270,000-acre Lodgepole fire in eastern Montana. The 1.1 million-acre refuge contains grasslands that have not been grazed for decades. FWS says it will negotiate individual agreements, but will open the refuge immediately with the paperwork to follow. "This is a difficult time for many families in Montana and we are eager to get to work as neighbors do and help people impacted by this fire disaster. We stand ready to welcome our neighbors in need," said Paul Santavy, the refuge manager. One wildlife ecologist said opening the refuge is an inappropriate strategy. George Wuerthner objected to opening public lands to private interests. He recommended help for the ranchers loans, hay and emergency assistance, but not access to public lands. Wuerthner is the ecological projects director for the Foundation for Deep Ecology.

Grazing rights sale bill back. Eight Democrats reintroduced legislation (HR 3624) July 28 that would authorize ranchers to sell their grazing permits to the federal government. The idea is to retire as many grazing permits as possible. Existing law doesn't allow for permit

retirements. Rep. Adam Smith (D-Wash.) is the lead sponsor. The livestock industry has long opposed the legislation. HR 3624 would allow for the retirement of up to 100 permits and leases per year. The bill does not mention a source of money for the program.

Conference Calendar

SEPTEMBER

6-9. **Nevada Mining Association Annual Convention** at Lake Tahoe, Nev. Contact: Nevada Mining Association at (775) 829-2121 or <http://www.nevadamining.org>.

15-19. **The Wildlife Society Annual Conference** in Albuquerque, N.M. Contact: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197. (301) 897-9770. <http://www.wildlife.org>.

21-24. **Public Lands Council Annual Meeting** in Flagstaff, Ariz. Contact: Public Lands Council, 1301 Pennsylvania Ave. N.W. - Suite 300, Washington, DC 20004. (202) 347-0228. <http://www.publiclands council.org>.

22-25. **The Geological Society of America Annual Meeting** in Seattle, Wash. Contact: The Geological Society of America, 3300 Penrose Place, Box 9140, Boulder, CO 80301. (1) (800) 472-1988. <http://www.geosociety.org>.

OCTOBER

1 3. **Interstate Oil and Gas Compact Commission Annual Conference** in Pittsburgh. Contact: Interstate Oil and Gas Compact Commission, P.O. Box 53127, Oklahoma city, OK 75132 3127. (405) 525 3556.
<http://www.iogcc.state.ok.us>

1 4. 41th **Geothermal Resources Council Annual Meeting** in Salt Lake City, Utah. Contact: Geothermal Resources Council, P.O. Box 1350, Davis, CA 95617 1350. (530) 758 2360. <http://www.geothermal.org>.

16 20. **Annual Oil & Gas Law Short Course** in Westminster, Colo. For information see <https://www.rmmlf.org>. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321 8100. <http://www.rmmlf.org>.

26 28. **National Land Conservation Conference** in Denver. Contact: Land Trust Alliance, 1331 H St., N.W., Suite 400, Washington, DC 20005 4711. (202) 638 4725, <http://www.lta.org>.

NOVEMBER

8 10. **Independent Petroleum Association of America Annual Meeting** in Naples, Fla. Contact: Independent Petroleum Association of America, 1201 15th Street NW, Suite 300, Washington, DC 20005. (202) 857 4722. <http://www.ipaa.org>.

14 17. **The National Trust for Historic Preservation Conference** in Houston. Contact: National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, DC 20036. (202) 588 6100. <http://www.nationaltrust.org>.

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Zinke would alter 'handful' of monuments, but not revoke

Secretary of Interior Ryan Zinke touched off one of the largest public lands battles ever yesterday (August 24) in recommending that President Trump reduce the size of a "handful" of national monuments. He would also expand some land uses within the monuments.

But Zinke told the *Associated Press* that he did not recommend to President Trump the complete revocation of any of the 27 monuments he reviewed. The secretary

posted a summary of a report he submitted to President Trump but that summary did not identify which monuments Zinke would shrink and by how many acres. Or what land uses he would expand.

Zinke months ago had recommended a reduction in the Bears Ears National Monument in Utah; yesterday he submitted all recommendations to the President.

Zinke also recommended changes to allowable uses in the Katahdin Woods and Waters National Monument, without boundary changes, according to the *Bangor Daily News*. That monument is managed by the National Park Service.

Before the final cut Zinke had already announced he would not recommend any change to the Craters of the Moon National Monument and Preserve in Idaho, Hanford Reach National Monument in Washington, Canyons of the Ancients National Monument in Colorado, Upper Missouri River Breaks National Monument in Montana, Grand Canyon-Parashant National Monument in Arizona, and Sand to Snow National Monument in California.

House Natural Resources Committee Chairman Rob Bishop (R-Utah) thanked Zinke for his recommendations. "I am encouraged by the recommendations to revise previous designations that were inconsistent with the law and outside the Act's size limitations. It is my hope that President Trump takes this opportunity to begin realigning uses of the law with its intended purpose," said Bishop.

Not so enthusiastic about Zinke's review is ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.). Just before Zinke was to send up his recommendations Grijalva published a report of his own charging that the secretary's review was biased toward commercial users of the public lands and against protection.

Grijalva repeated environmentalist charges that in Zinke's tours of the West (and of Maine) over the last few months he devoted more time to listening to industry officials than to the public at large. "A review process supposedly intended to include and educate the American public that includes selective, secretive meetings and hides the results of public comments is an obvious sham," said the Grijalva report. His report is available at <http://bit.ly/2iofeBx>.

But in Zinke's summary of his review the secretary said that comments in favor of monuments were the result of "a well-orchestrated national campaign organized by multiple organizations."

He inferred that comments from monuments critics were more substantive. "Opponents point to other cases where monument designation has resulted in reduced public access, road closures, hunting and fishing restrictions, multiple and confusing management plans, reduced grazing allotments and timber production, and pressure applied to private landowners encompassed by or adjacent to a monument to sell," he said.

The Earthjustice environmental law firm indicated that it would file a lawsuit if President Trump attempted to reduce the size of any monument or to revoke a designation altogether. Before Zinke made his recommendations Earthjustice President Trip Van Noppen said, "If President Trump attempts to gut these special places in violation of the Antiquities Act and in spite of this roar of public support, Earthjustice will see him in court."

Before Zinke submitted his report to the White House, 16 western Republican Congressmen threw down an opposite gauntlet in the form of a House Western Caucus position paper. It recommended the complete rescission of ten monument designations and the modification of 13 more. The caucus would not change the boundaries of four monuments.

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The Western Caucus would rescind completely the designation of the 1.3 million-acre Bears Ears National Monument in Utah; a 331,000-acre Berryessa Snow Mountain National Monument in northern California (Forest Service and BLM manage); the 103,000-acre Cascade Siskiyou National Monument in Oregon; a 1.01 million-acre Grand Canyon-Parashant National Monument in northwestern Arizona; the 1.7 million-acre Grand Staircase-Escalante National Monument in Utah; a 129,000-acre Ironwood Forest National Monument in Arizona; an 87,000-acre Katahdin Woods and Waters National Monument in Maine (managed by the National Park Service); a 486,000-acre Sonoran Desert National Monument in Arizona; a 280,000-acres Vermilion Cliffs National Monument in Arizona; a 3.1 million-acre Northeast Canyons and Seamounts Marine National Monument in the Atlantic Ocean off New England (managed by NOAA and the Fish and Wildlife Service).

The Western Caucus recommendations are available at:

<https://westerncaucus.house.gov/sites/westerncaucus.house.gov/files/documents/6.30.17%20Final%20letter%20to%20Zinke%20Antiquities%20Review.pdf>.

Trump began the initiative April 26 when he signed an [executive order](#) directing the Interior Department to review the designations of national monuments of more than 100,000 acres made since 1996, plus the Maine monument. Trump did not take the ultimate step and say he had the authority to revoke those designations.

The Trump-Zinke review sets the stage for the President to at least reduce the size of the national monuments, if not outright revoke their designations.

In one dramatic action, just before a comment period on the Zinke review ended July 10, the outdoor industry formally pulled its annual conference out of Salt Lake City. The Outdoor Industry Association said it moved the conference to Denver - worth \$45 million per year to the host city - because of Utah politicians' hostility to national monuments, particularly Bears Ears.

Zinke's two-page summary of his review, which again does not identify monuments that should be reduced, is available at: <https://www.doi.gov/sites/doi.gov/files/uploads/monument-report-summary.pdf>.

DoI reorg may include agency shifts; Tidwell steps down

Secretary of Interior Ryan Zinke predicted recently that the headquarters for BLM, the Fish and Wildlife Service, and the Bureau of Reclamation will be moved from Washington, D.C., to Denver.

In a July meeting with U.S. Geological Survey (USGS) executives Zinke said the transfer would be part of his plan to shift personnel from Washington and regional headquarters to the front lines, according to the publication *E&E News*.

In addition Zinke said he intends to combine management of federal lands via inter-agency joint management areas (JMAs), with leadership of the JMAs shifting among agencies.

The USGS notes said, "There is no target on Denver but it is likely that some Denver employees will move to the JMA locations. Denver will probably have the headquarters for BLM, FWS and BOR."

As for joint management, the notes paraphrase Zinke, "(He) wants to have all DOI field offices report to (JMAs) based on watersheds. Employees would be co-located and functions integrated, there would also be liaison functions. Divide country into 13 regions with a common model for all JMAs. Leadership at the JMA Offices could change or rotate between bureaus in the JMAs. The JMAs will have a focus on operations."

Zinke laid out his goals in a July 21 luncheon with USGS officials, according to notes of that meeting obtained by *E&E News*.

In a related personnel move long-time **Forest Service Chief Tom Tidwell** is leaving that position at the end of the month to retire. Tidwell has had a 40-year career with the Forest Service. Although the Obama administration appointed Tidwell chief in 2009, the Trump administration has kept him on.

Tidwell will be replaced by **Tony Tooke**, the regional forester for the Southern Region of the Forest Service, the Department of Agriculture announced August 21.

Secretary of Agriculture Sonny Perdue said of Tidwell, "From the start, we have relied on Chief Tidwell's experience and counsel, drawing on his years of experience both in the field and in Washington."

Of Tooke, Perdue said, "Tony has been preparing for this role for his whole professional life, and at a time when we face active and growing fires, his transition into leadership will be seamless."

The Wilderness Society, no friend of the Trump administration, had positive words on Tooke. "Tooke has a strong record of accomplishment in bringing together diverse interests and forging new partnerships to help the Forest Service meet the many challenges facing our nation's forests," said Mike Anderson, senior policy analyst with the society.

Among other things, Tidwell has repeatedly asked Congress to transfer emergency fire-fighting money to disaster spending to prevent the borrowing of line operations money to fight fires, both during the Obama and Trump administrations. That borrowing costs the agency hundreds of millions of dollars per year.

As for the Interior Department reorganization, how much say Congressional appropriations and authorizing committees would have is not clear.

A department spokeswoman would only say that joint command is a Zinke goal. "The Secretary is drawing his inspiration from the military where they have joint commands," said spokeswoman Heather Swift. "The Secretary would like to see federal lands management agencies work together more cooperatively to deliver management decisions. He prefers to see all agencies involved in an area working together to make sure trails meet, land and wildlife is cohesively managed, and that the federal government is a good neighbor and partner."

Earlier this year the Interior Department transferred as many as 50 employees out of their former jobs, many of them in the Senior Executive Service (SES). A follow-on transfer is widely expected.

Congressional Democrats didn't react kindly to the first round of transfers. Rep. Chellie Pingree (D-Me.) offered an amendment to a fiscal year 2018 Interior and Related Agencies appropriations bill (HR 3354) July 18 that would have required consultation with Congress before such a move.

But the committee rejected the proposal by voice vote after Rep. Ken Calvert (R-Calif.), chairman of the House subcommittee on Interior Appropriations, said personnel details should not be the business of Congress. "It's a terrible precedent for Congress to interfere with the Senior Executive Service," he said.

Besides, he said, the subcommittee had already conducted oversight. "This topic was discussed in each of our subcommittee hearings this year," he said. The full committee then rejected the Pingree amendment by voice vote.

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Separately, seven Senate Democrats July 24 asked the Interior Department Inspector General to investigate the transfer of the 50 SES employees. The senators, led by Sen. Maria Cantwell (D-Wash.), said, "Any suggestion that the Department is reassigning SES employees to force them to resign, to silence their voices, or to punish them for the conscientious performance of their public duties is extremely troubling and calls for the closest examination."

The House Appropriations Committee action is but one incident involving dramatic personnel changes launched by the Trump.

As part of the administration's ambitious government-wide program to reduce federal spending, the Interior Department budget calls for an employee reduction of six percent, from 64,000 to 60,000 full-time equivalents. For the Park Service alone the budget would take away 1,242 jobs, reducing the number of full-time equivalent employees from 19,510 to 18,268.

Anent a reorganization Rep. Scott Tipton (R-Colo.) and Sen. Cory Gardner (R-Colo.) introduced legislation (HR 2287, S 1007) in May that would authorize the transfer of BLM's headquarters from Washington, D.C., to one of 12 western states. The bills would allow the secretary of Interior to choose a new location.

Gardner in the past has suggested a transfer of the headquarters to Grand Junction, Colo. "Moving BLM's headquarters West is a commonsense solution that Coloradans from across the political spectrum support," he said.

But an alliance of BLM retirees said the BLM headquarters should remain in Washington, D.C. The Public Lands Foundation said BLM employees should be in Washington to meet immediately with Congress and other players.

Said foundation president Jesse J. Juen in a June 14 letter to Zinke, "This includes attending impromptu yet critical meetings requiring face-to-face discussions and learning the process of how to be agile, flexible and handle difficult, complex and political discussions and situations related to the day-to-day demands of any administration, Congress, agency, community and partner."

The USGS memo summarizing Zinke's briefing is available at:
https://www.eenews.net/assets/2017/08/15/document_gw_01.pdf.

Zinke sage-grouse policy addresses energy, states' role

Secretary of Interior Ryan Zinke August 7 directed BLM to make fundamental changes to its sage-grouse policy that would at once loosen restrictions on commodity users and defer to state policies.

In a memo to the Interior Department Zinke identified the substantive changes he wants BLM to make in sage-grouse management plans the bureau adopted in 2015. Those changes are based upon recommendations Zinke received from an interagency sage-grouse review team.

. High on Zinke's list is direction to "Modify or issue new policy on fluid mineral leasing and development" and "Work with the States to improve techniques and methods to allow the States to set appropriate population objectives."

To carry out Zinke's orders BLM will have to conduct a lengthy revision of 98 land use plans that it developed in association with the Forest Service.

When BLM and the Forest Service finalize those changes environmentalists are sure to pounce with lawsuits. (Two states - Idaho and Utah - already have lawsuits on the table against the Obama plans.)

For now in a preliminary move the Center for Biological Diversity on August 9 filed a Freedom of Information Act request for all records applicable to the sage-grouse review team's work. The center said it wanted to find out who was calling the shots on the review teams.

Randi Spivak, the center's public lands program director, said Zinke's team is "undermining years of bipartisan cooperation and scientific study to cater to fossil fuel companies and other extractive industries. The public is entitled to know who's influencing Zinke in his closed-door review process."

If environmentalists object to the Zinke order and the review team, the livestock industry welcomed both. "During an initial review of the report, I was encouraged by several key priorities including the compatibility of proper grazing management and conservation," said Public Lands Council President Dave Eliason.

"The report acknowledges the need for a more collaborative approach between grazing permittees and federal leadership, as well as a reexamination of the Habitat Objectives Table and its application - both key elements to successful conservation efforts for the Greater Sage Grouse," he said.

Separately on the sage-grouse front the Interior Department proposed a big \$11.5 million reduction in BLM's budget for sage-grouse management in fiscal year 2018. However, the House Appropriations Committee July 18 approved the same appropriation for sage-grouse management for fiscal 2017 as in fiscal 2018 - \$60.9 million - in a fiscal 2018 spending bill (HR 3354).

For now the Zinke memo of August 7 to the Interior Department is carrying the ball.

Participating in the review were representatives from BLM, the Fish and Wildlife Service, the Forest Service, the U.S. Geological Survey, and a Western Governors Association sage-grouse task force.

The western governors are not united in their demand for wholesale changes in the 98 plans. On May 26 Wyoming Gov. Matt Mead (R-Wyo.) and Colorado Gov. John Hickenlooper (D-Colo.) wrote Zinke and asked him NOT to change course.

At the same time the House Appropriations Committee would maintain spending on the sage-grouse it would also forbid the Fish and Wildlife Service from listing the bird as threatened or endangered under the Endangered Species Act.

Currently the greater sage-grouse is governed by the BLM and Forest Service land use plans, plus state plans, but is not proposed for listing under the ESA. Although there is the slimmest chance that the Trump administration would attempt to list the sage-grouse, House appropriators are taking no chances.

The Obama administration sage-grouse policy, issued on Sept. 22, 2015, did not list the greater sage-grouse as an endangered or threatened species as western states had feared. Instead, it directed BLM and the Forest Service to implement 98 records of decisions to protect the bird. The plans apply to 67 million acres across 10 western states.

The review team report is cautious in recommending policy changes, suggesting that each attempt to increase energy development or state participation would protect the greater sage-grouse.

For instance, on increasing development in priority habitat management areas the report said, "For waiver, exception, and modification language for PHMA stipulations, options include investigating opportunities to provide additional

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waivers, modifications, and exceptions through policy or potential plan amendments, while adequately addressing the threats in the area, avoiding habitat loss or fragmentation, and ensuring effective and durable conservation, while providing for economic development."

Similarly on allowing states to set population goals for the sage-grouse the review team said, "In support of setting population targets, the DOI Team recommends support for developing tools and techniques to estimate and set population objectives, including (1) a State/Federal/academic partnership that is working to develop and refine techniques to better estimate range-wide populations over the next two years; and (2) USGS-supported research to improve the ability to find new leks, understand the percent of leks not counted because they are unknown, and increasing the accuracy of counts once leks are detected."

The report is available at:

https://www.doi.gov/sites/doi.gov/files/uploads/so3353_memo_coverletter_report_080717.pdf.

Full appeals court says EPA must repropose methane rule

A federal circuit court last month rejected an attempt by EPA to postpone implementation of a methane emissions rule that is a counterpart to a BLM methane emissions rule.

By a 9-to-2 vote the U.S. Circuit Court for the District of Columbia upheld July 31 a three-judge panel decision ordering EPA to start over before changing the rule, including public notice, public comment and a formal rewrite. The circuit court gave no reason for its decision, simply issuing a one-page order upholding the three-judge decision.

The circuit court decision may serve as a precedent to counter attempts by the Interior Department to stay some provisions of BLM's own methane rule of Nov. 18, 2016. BLM said the Western Energy Alliance had justified a stay in implementing those provisions by objecting to the "regulatory uncertainty" of them. BLM has stayed portions of the rule dealing with leakage detection, storage tanks and pneumatic device provisions.

There is already litigation underway against the Obama administration BLM methane rule, brought by the energy industry. On January 16 U.S. District Court Judge Scott W. Skavdahl in Wyoming refused for now to halt implementation of the rule. He held that industry plaintiffs, including the Western Energy Alliance, had not yet proved they would be harmed by the regulation.

Separately, 17 national and local environmental groups filed a second, very different lawsuit in U.S. District Court for Northern California July 10 arguing the Administrative Procedures Act (APA) also forbade BLM from delaying its methane emissions rule.

In the EPA case, the agency had delayed implementation of the methane emissions rule for 90 days. EPA had argued that it had broad discretion to revisit its own rules under the Clean Air Act.

But in a two-to-one decision the Tenth Circuit July 3 held that the APA forbids agencies from delaying a rule without a formal rulemaking procedure.

"Agencies obviously have broad discretion to reconsider a regulation at any time. To do so, however, they must comply with the (APA), including its requirements for notice and comment," said the court majority.

The court continued, "EPA's stay, in other words, is essentially an order delaying the rule's effective date, and this court has held that such orders are tantamount to amending or revoking a rule."

Signing off on the majority rule were Judges David S. Tatel (a President Clinton appointee) and Robert Leon Wilkins (an Obama appointee).

In a dissent Judge Janice Rogers Brown (a President George W. Bush appointee) said EPA had authority to delay implementation of the rule because a delay does not change a rule.

"EPA is not compelling compliance here," she argued. "If a regulated entity wants to comport its conduct to the requirements of the stayed rule, it is free to do so. By issuing the stay, all the EPA has indicated is that it will not, legally or practically, enforce the rule under reconsideration. The stay's consequences therefore do not impose legal or practical requirements on anyone - separating them from the kind of consequences encompassed by 'final agency action.'"

Because there is no final agency action, she concluded, there is no justiciable action for the court to consider and EPA's delay should continue.

Environmental group plaintiffs in the EPA suit, including the Sierra Club, declared victory after the full circuit upheld the three-judge panel. "Donald Trump and (EPA Administrator) Scott Pruitt's attempt to delay the implementation of these crucial protections had no basis in law, and we are glad to see their effort to do the bidding of the fossil fuel industry fail," said Sierra Club Chief Climate Counsel Joanne Spalding.

The Tenth Circuit decision is available at: [https://www.cadc.uscourts.gov/internet/opinions.nsf/A86B20D79BEB893E85258152005CA1B2/\\$file/17-1145-1682465.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/A86B20D79BEB893E85258152005CA1B2/$file/17-1145-1682465.pdf).

The big question now is, does the court ruling on EPA's methane rule set a precedent for separate BLM energy rules that may or may not be suspended/delayed by the Trump administration?

On June 14 BLM delayed the implementation of ten or so provisions of the Nov. 26, 2016, methane rule. That is the subject of the July 10 environmentalist lawsuit.

BLM and EPA announced separate rules in early June to postpone key elements of methane emissions rules for two years. As justification, BLM invoked a provision of the APA that authorizes agencies to postpone the implementation of new rules when petitioners give good cause.

In this instance BLM said June 15 the Western Energy Alliance had justified the delay of its Nov. 16, 2016, rule by objecting to the "regulatory uncertainty" of provisions dealing with leakage detection, storage tanks and pneumatic device provisions.

Other provisions that BLM is already implementing, such as development of a waste minimization plan, royalty free use of production, definitions of unavoidably lost and avoidably lost, limits on drilling and flaring, and downhole maintenance will continue in place, BLM said.

ONRR revokes fossil energy royalty rule, despite suit

The Office of Natural Resources Revenue (ONRR) August 7 revoked an Obama administration coal, oil and gas royalty valuation rule, effective September 6.

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Despite a lawsuit from two states that argues ONRR does not have authority to outright revoke the rule, the office said it was forced to act because the fossil fuel energy industry objected to several provisions in the Obama rule. Among other things the oil and gas industry objected to a "default" provision that would allow ONRR to use alternative standards to value product.

Said Secretary of Interior Ryan Zinke, "The increased costs associated with the Valuation Rule had the potential to decrease exploration and production on Federal lands, both onshore and offshore, making us rely more and more on foreign imports of oil and gas."

But the attorneys general of New Mexico and California, major players in the public lands energy production game, have already filed a lawsuit against ONRR for an earlier agency action suspending the Obama rule. The states and other groups will almost certainly extend their legal action to the September 6 rule revoking the Obama regulation outright.

The states argue, as have Congressional Democrats, that ONRR has no authority to delay implementation of a regulation once it has been instituted.

Said ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) of the August 7 revocation, "The Interior Department admits it is giving away up to \$750 million over a decade to private companies making profits on a public resource. Suspending this rule was not lawful in the first place, and this repeal violates Interior's obligation to ensure a fair return to taxpayers."

In its July 1, 2016, rule the Obama regulations replaced an old standard that applied (and would apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

Before cancelling the Obama rule, the Trump administration took two steps to block implementation. On February 22 ONRR postponed implementation and on April 4 it proposed outright repeal of the rule, combined with a solicitation of comments on a new proposed rule.

Zinke received important endorsements of the ONRR cancellation action. Said Senate Energy Committee Chairman Lisa Murkowski (R-Alaska), "While the federal government will continue to collect its fair share of revenues from responsible development, the repeal of this rule will help prevent negative impacts to exploration and production that would put our energy dominance at stake."

And the Congressional Western Caucus backed the ONRR action, "This burdensome new regulation would have bankrupt small businesses, discouraged responsible energy production and hit the pocketbooks of hard-working American families."

But the Western Organization of Resource Councils disagreed, saying the rule would actually cost local communities. Said Steve Charter on behalf of the councils, "The administration is rolling back important taxpayer protections with the claim that they 'burden' industry. In reality, it is our local governments and schools that will be burdened by the loss of revenue. Fossil fuel companies will pay \$60 million to \$75 million less each year for mining and drilling taxpayer-owned coal, oil and gas."

In its August 7 rule ONRR laid out several provisions in the Obama regulation that industry had faulted. High on the list was a provision that would allow ONRR to substitute different valuation rules when it identified problems in a company's reporting.

situations such as "when a lessee engages in misconduct, when a lessee breaches its duty to market, or any other situation that compromises our ability to reasonably determine the fair market value of the oil, gas, or coal."

But, said ONRR, "because we described those circumstances so broadly, without limits or meaningful guidance, the rule created more confusion and uncertainty than it resolved."

In addition ONRR said coal companies objected to a provision allowing for the valuing of coal on the sale price of electricity.

Said ONRR, "For example, lessees argued that valuing coal based on the first arm's-length sale of coal as electricity is a difficult task because the sale price of electricity does not reflect the value of coal in a simple, predictable fashion - electricity markets are too diverse and complex to trace electricity prices back to the lease."

Wildfire funding patch promoted in flood insurance bill

Just before leaving on a month-long summer vacation in early August senators began to address wildfire policy, with varying proposals.

Most prominently, Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) said of broad policy, "What we need is a comprehensive solution that addresses both wildfire budgeting and forest management. We need to tackle both of those, at once, because we know the wildfire problem is not just a budgeting problem - it's also a management problem."

Shortly after Murkowski's call to arms at a committee hearing August 3, four senators proposed a solution to the wildfire budget problem called fire borrowing. The senators, including Sen. Jim Risch (R-Idaho) and Ron Wyden (D-Ore.), asked the Senate Banking Committee to include a solution in a flood insurance bill (S 1571).

"Fixing the broken system of wildfire funding through the National Flood Insurance Program Reauthorization Act of 2017 will ensure that federal agencies have the stable funding they need to not only fight wildfires but also complete forest health projects that will reduce the risk and severity of future fires," said Risch and Wyden.

The provision in S 1571 would authorize the transfer out of appropriations bills emergency wildfire costs greater than the 10-year average. It would do that by designating emergency wildfires as major disasters under the national disaster relief law. Such disasters are paid for outside appropriations bills.

S 1571, introduced by Sen. Banking Committee Chairman Mike Crapo (R-Idaho) July 17, is primarily intended to reauthorize for six years a National Flood Insurance Program.

Risch and Wyden wrote, "We write to strongly urge you to ensure this provision remains in the final bill as it is considered by the Committee and in the full Senate."

But, as Murkowski noted, wildfire funding is not the only problem with the nation's emergency wildfire program, prevention of fires in the first place is necessary.

And that's where the politics gets complicated. The House Natural Resources Committee June 27 approved broad legislation (HR 2936) by a 20-to-12 vote that not only authorizes a disaster cap for emergency wildfire costs but also speeds

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environmental reviews of timber sales. But many Democrats and environmentalists contend that those speedy reviews are environmentally unsound.

As was the case last year the House committee bill is certain to provide a negotiating position this year for Republicans (and a handful of Democrats) in jockeying for new wildfire legislation.

The bill from Rep. Bruce Westerman (R-Ark.) was cosponsored by seven Republicans and two Democrats - Reps. Rick Nolan (D-Minn.), Collin Peterson (D-Minn.)

In a separate initiative a bipartisan coalition of House members introduced legislation (HR 2862) June 8 that would place a disaster cap on wildfire funding, without altering timber sales procedures.

The measure under lead sponsor Rep. Mike Simpson (R-Idaho) would transfer emergency wildfire expenses greater than the 10-year average out of discretionary appropriations and into disaster spending.

So, if the Senate Banking Committee doesn't include the fire borrowing provision in the flood insurance bill, Murkowski's energy committee may be forced to pick up the ball.

Murkowski pointed to a discussion draft proposal she and several other senators from both political parties - including Crapo, Risch and Wyden - published last year. That sketchy outline calls for the disaster funding cap as well as unspecified steps to accelerate hazardous fuels projects.

Forest Service Chief Tom Tidwell has promised to work on the legislation with Congress (Tidwell announced last week that he is retiring at the end of this month.)

That promise was reinforced at the August 3 Senate hearing by Forest Service witness Victoria C. Christiansen, deputy chief for state and private forestry. "We are committed to working with Congress to develop a solution that addresses the growth of fire programs as a percent of the agency's budget, and also ends the practice of transferring funds from non-fire programs when suppression funds fall short before the end of the fiscal year," she said.

At press time federal, state and other fire fighters were combatting more than 40 large fires over more than 500,000 acres. The leading states were Oregon (12 fires) and Montana (11 fires).

Thus far this year the fire season has been more severe than the ten-year average in acres burned. Already, more than 6.5 million acres have burned compared to an average of just over 5 million acres. Last year at this time just 4.3 million acres had burned.

Whether Congress has put up enough money in a fiscal year 2017 appropriations bill (PL 115-31 of May 5) to pay for this summer's fire season remains to be seen. Congress appropriated just over \$4 billion for the Forest Service (\$3.175 billion) and the Interior Department (\$1.007 billion) for wildfire expenses. Those totals include \$407 million for emergency wildfires.

Enviro apply full-court press against O&G development

The Trump administration's campaign to increase oil and gas development on the public lands is being met by an expected campaign from environmentalists to block it.

The Trump campaign is laid out in a July 6 executive order from Secretary of Interior Ryan Zinke directing BLM to make sure each state office holds quarterly oil and gas lease sales and identifies impediments to swift processing of applications for permit to drill (APDs).

Thus far environmentalists are putting their energy into slowing (or preventing) the leasing of oil and gas in the usual Rocky Mountain States - Wyoming, Utah, Montana, New Mexico and Colorado.

Most recently the WildEarth Guardians environmental group took aim at planned December oil and gas lease sales in Montana (98,000 acres from 104 tracts) and New Mexico (2,100 acres.) The group asked its members to object to the sales because of possible adverse environmental impacts from hydraulic fracturing.

"In Montana, the iconic plains of the Powder River Basin are in industry's crosshairs," the group warned its members. "And in New Mexico, the Guadalupe Mountains and Carlsbad Caverns National Park are all facing increased pressure from fracking."

That's just the tip of the iceberg. Environmentalists are also setting the stage for legal action against recent and upcoming oil and gas lease sales in Wyoming and Utah.

Perhaps most controversially BLM has prepared environmental assessments backing a December sale of nearly 100,000 acres in northeastern Utah. The Southern Utah Wilderness Alliance says the tracts are too close to the San Rafael Swell, the Book Cliffs, and Dinosaur National Monument.

"This ill-advised proposal would, among other things, green-light oil and gas development right next to the (Dinosaur) monument, including along the primary access route travelled by thousands of visitors annually," complained the alliance.

Similarly, WildEarth Guardians last month objected to a BLM proposal to sell 45 oil and gas parcels totaling 57,075 acres in March 2018 in proximity to the new Bears Ears National Monument. Zinke has already put out the word that he will recommend that President Trump reduce the size of the monument.

Said the Guardians in a July 27 letter to BLM, "A large number of the proposed lease parcels are directly adjacent or in close proximity to the southeastern corner of Bears Ears National Monument." Rebecca Fischer, climate guardian for the group, signed the letter.

Behind those guerrilla war efforts lies a broader environmentalist lawsuit filed in June that challenges oil and gas leases sold by the Obama administration in 11 sales covering 463,553 acres in Wyoming, Utah and Colorado. The suit says simply that BLM failed to consider the greenhouse gas impacts of the development resulting from those sales.

That lawsuit is available at https://climatewest.files.wordpress.com/2017/07/westwide-msj_memo_doc-55.pdf.

In July Zinke in an executive order directed BLM to hold quarterly oil and gas lease sales. BLM state offices usually do try to hold quarterly sales but sometimes postpone the events because of complications due to NEPA and ESA protests. He also directed BLM to identify obstacles to swift processing of applications for permit to drill.

What steps BLM can take to expedite permits are unclear because the bureau must comply with the National Environmental Policy Act and the Endangered Species

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Act, among other laws, prior to approving permits. And that takes time.

The Obama administration did take one huge step that it said would speed APD and lease approvals - processing paperwork electronically. Late last year it began holding lease sales electronically instead of through in-person bidding.

Then on February 7 the Trump administration published an Obama administration-generated rule that makes online filing of APDs the standard procedure, subject to some exceptions. Those two electronic moves may speed both the processing of lease nominations and the processing of APDs.

Rep. Diane Black (R-Tenn.) has a different strategy - turn oil and gas leasing and permitting over to states that have an established program. Her bill (HR 3565) introduced July 28 would allow states to apply to conduct an oil and gas program.

DoI review of rules conducted on case-by-case basis

In its campaign to reverse/revise Obama administration public lands rules, the Trump administration is deploying varying strategies to avoid lengthy delays in preparing new rules. But those strategies face a barrage of lawsuits.

On paper existing rules can't be unilaterally reversed, just like that. Nevertheless, the department says that a number of authorities, such as court decisions and industry objections, do authorize quick reversals. Here are four possibilities:

On August 7 the Office of Natural Resources Revenue (ONRR) outright revoked an Obama administration oil, gas and coal royalty valuation rule of July 1, 2016. ONRR said it had such authority because the oil and gas and coal industries objected to the regulation.

Second, Congress on March 27 revoked a BLM planning 2.0 rule of Dec. 12, 2016 (PL 115-12), using its authority under the Congressional Review Act (CRA).

Third, on March 29 Secretary of Interior Ryan Zinke canceled a coal-leasing moratorium imposed by former Secretary of Interior Sally Jewell in January 2106.

Finally, BLM is proceeding to cancel outright a hydraulic fracturing rule because a court has held the rule was invalid.

There is a huge legal risk. Notably, a federal circuit court July 31 rejected an attempt by EPA to postpone implementation of a methane emissions rule that is a counterpart to a BLM methane emissions rule. By a 9-to-2 vote the U.S. Circuit Court for the District of Columbia upheld a three-judge decision ordering EPA to start over with public notice, public comment and a formal rewrite before changing the rule.

So for some rank-and-file regulations BLM and the Fish and Wildlife Service (FWS) may have to follow standard regulatory procedure and propose (as they have begun to do) rescissions or revisions to regulations, take public comment and then post final decisions.

One veteran public lands attorney with the Holland & Hart law firm said the administration will address rule changes on a case-by-case basis. "It's always a mixture," said William Myers, former Interior Department solicitor under President George W. Bush. "There are some instances where the department would have to be in compliance with FLPMA and NEPA. There are other cases where the department can issue secretarial orders and BLM can change its instruction manual. But where one starts and one stops there is not a bright line."

FLPMA Is the Federal Land Policy and Management Act and NEPA is the National Environmental Policy Act.

Meanwhile, environmentalists are already litigating attempts to block Obama administration hydraulic fracturing and methane emissions rules. And they promise to contest other actions in court. In addition the states of New Mexico and California have filed suit against the ONRR oil, gas and coal royalty postponement.

Said Holland & Hart's Myers, "I think there is a lot of thumping of the table by groups concerned about which way the administration is going. It's quite routine when there is a change of administrations that the new administration conducts a broad-brush policy review."

President Trump started the ball rolling toward the revocation/revision of many public lands rules March 28 when he directed the Interior Department to terminate the coal-leasing moratorium and to begin work on reversing oil and gas regulations governing hydraulic fracturing, methane emissions, oil and gas development in national parks, and oil and gas development in national wildlife refuges.

Secretary Zinke immediately terminated the coal-leasing moratorium and ordered BLM to begin reversing the oil and gas regulations.

On July 20 the Trump administration's Office of Information and Regulatory Affairs published a list of 860 Obama administration regulations it has targeted for cancellation or replacement. The list is available at: <https://www.reginfo.gov/public/do/eAgendaMain>.

The list of Interior Department rules on the chopping block is here: <https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION GET AGENCY RULE LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1000&Image58.x=41&Image58.y=22>. The list contains negligible proposals for the Forest Service.

The Trump administration is targeting these public lands policies, among others:

Hydraulic fracturing: BLM made it official July 25: It will attempt to cancel outright a hydraulic fracturing rule of March 2015, instead of rewriting it.

The bureau said it does not intend to write a new regulation because other federal regulations and state standards adequately govern the practice.

In addition BLM suggested that it had authority to simply cancel the 2015 rule because the U.S. District Court in Wyoming set the rule aside in a June 21, 2016, decision. So if the rule never went into effect, BLM inferred, the bureau could simply cancel it.

On June 21, 2016, U.S. District Court Judge Scott W. Skavdahl in Wyoming blocked implementation of the regulation. Although Judge Skavdahl set aside the rule, his decision is now under appeal to the Tenth U.S. Circuit Court of Appeals. The circuit took oral testimony on the rule July 26.

The BLM rule of March 26, 2015, was not subject to a Congressional repeal resolution because it was issued before the deadline for filing such resolutions.

The rule would have companies (1) validate well integrity and cement barriers, (2) disclose chemicals used in fracking shortly after completing operations, (3) follow stiffer standards on storage of waste fluids and (4) submit more detailed information on the geology and location of existing wells.

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Methane emissions: On June 15 BLM proposed a stay of several provisions of a methane emissions rule completed by BLM on Nov. 18, 2016. BLM said the Western Energy Alliance had justified the delay of the rule by objecting to the "regulatory uncertainty" of provisions dealing with leakage detection, storage tanks and pneumatic devices. (See related article page 7.)

Other provisions that BLM is already implementing, such as development of a waste minimization plan, royalty free use of production, definitions of unavoidably lost and avoidably lost, limits on drilling and flaring, and downhole maintenance will continue in place, BLM said.

There is already litigation underway against the Obama administration's BLM methane rule. On January 16 Judge Skavdahl refused for now to halt implementation of the BLM rule. He held that industry plaintiffs, including the Western Energy Alliance, had not yet proved they would be harmed by the regulation.

However, Skavdahl was skeptical of BLM's argument that the rule is designed to prevent waste, i.e. methane venting, and not to assume EPA's clean air responsibility. The oil and gas industry argue in their suit that BLM has no authority over Clean Air Act regulation; only EPA does. Said the judge, "The Court questions whether the 'social cost of methane' is an appropriate factor for BLM to consider in promulgating a resource conservation rule pursuant to its [Mineral Leasing Act] authority."

BLM planning: Congress took care of this one - it passed a resolution under the CRA that, when signed into law by President Trump, revoked a BLM planning 2.0 rule of Dec. 12, 2016. The White House Office of Information and Regulatory Affairs says the President's signature on the resolution automatically replaces a *Federal Register* notice and sends policy back to pre-Obama planning rules.

The 2.0 planning rule revised the substance of a previous planning rule by among other things emphasizing areawide planning, requiring an assessment prior to the writing of a management plan and involving the public earlier in the planning process.

Of importance once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" similar to the old one.

BLM's existing planning rules - posted in 1979, 1983 and 2005 - guide the management of public lands, as required by the Federal Land Policy and Management Act of 1976.

Oil & gas & coal valuation: On August 7 ONRR revoked an Obama administration oil, gas and coal royalty rule of July 1, 2006. (See related article page 8.)

Despite a lawsuit from two states that argues ONRR has no authority to outright revoke the rule, the office said it was taking the action because the fossil fuels energy industry objected to several provisions of the Obama rule. Among other things the oil and gas industry objected to a "default" provision that allowed ONRR to use alternative standards to value product.

The department's target is an Obama administration rule that sought to replace an old standard that applied (and may apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

California and New Mexico have filed a lawsuit against the delay in implementing the Obama rule. They argue, as do Congressional Democrats, that ONRR has no authority to delay implementing a regulation once it has been instituted.

ESA grizzly bears: Following the lead of the Obama administration, the Trump administration said June 22 it will delist the Yellowstone population of the grizzly bear under the Endangered Species Act.

Absent a court order – and one will surely be requested – management of the Yellowstone bear will be turned over to the States of Wyoming, Montana and Idaho. The grizzlies that stay within the borders of Yellowstone National Park will be managed by the Park Service and will be subject to state rules only if they leave the park.

FWS published a grizzly bear recovery plan in 1993. FWS first delisted the Yellowstone population in 2007 but a federal judge vacated that action. In March 2016 the Obama administration repropose delisting.

Sage-grouse plans: Zinke on August 7 directed BLM to make fundamental changes to its sage-grouse policy that would at once loosen restrictions on commodity users and defer states. (See related article page 5.)

In a memo to the Interior Department Zinke identified the substantive changes he wants BLM to make in sage-grouse management plans the bureau adopted in 2015. Those changes are based upon recommendations Zinke requested from an interagency sage-grouse review team.

To carry out Zinke's orders BLM will have to conduct a lengthy revision of 98 land use plans that it developed in association with the Forest Service. When BLM and the Forest Service execute those changes environmentalists are sure to pounce with lawsuits.

Coal moratorium: on March 28 President Trump issued a sweeping executive order that directed the Interior Department to terminate a coal-leasing moratorium declared by former Secretary of Interior Sally Jewell in January 2016. (See following article.)

Zinke the next day issued an executive order of his own – Secretarial Order 3348 – that terminated the moratorium.

The Trump administration does not believe the prior work done on an EIS by the Obama administration requires continuation of that work, or an EIS to back a reversal.

Environmentalists immediately filed a lawsuit arguing that the Trump administration should prepare an EIS before cancelling the moratorium. The Earthjustice law firm is leading the lawsuit on behalf of seven conservation groups.

Coal lease application stopped by moratorium is back

BLM late last month took an initial step toward leasing a coal tract that had been frozen by an Obama administration moratorium on new coal development on public lands.

The bureau posted a notice of intent to prepare an EIS on the possibility of leasing 441 million tons of coal in the West Antelope 3 Coal Lease by Application. Antelope Coal LLC applied for the lease on Aug. 24, 2015.

On January 15, 2016, then Secretary of Interior Sally Jewell famously declared a ban on development of 32 tracts until a policy review was completed. The ban did allow for environmental documentation to proceed.

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in order to support President Trump's campaign to increase fossil fuels energy development on the public lands.

Issuance of a lease and approval of a mining plan for West Antelope 3 are still a long way off. If BLM does approve a lease and the Office of Surface Mining approves a mining plan, the lease will become part of the ongoing (and huge) Antelope Mine near Gillette, Wyo., in the Powder River Basin.

Hanging over the coal industry nationally has been a loss of market share to natural gas and renewable energy. The parent company of Antelope Coal, Cloud Peak Energy Inc., said as of June 30 the company had lost \$27.1 million thus far this year. However, the company said shipments increased in the second quarter by 21 percent "as the industry environment continued to improve."

The public lands coal industry was in the bulls-eye during the Obama administration as Senate Democrats teamed with environmentalists to demand an end to any more coal leasing on the public lands.

In fact Sen. Jeff Merkley (D-Ore.) and seven of his colleagues have reintroduced this year legislation (S 750) called the Keep-It-In-the-Ground Act that would forbid the issuance of any new leases on the public lands. That ban would also apply to oil, gas and oil shale.

Under BLM's coal leasing procedure a Powder River Regional Coal Team must first recommend that BLM process a coal lease application. That recommendation for Antelope 3 was handed down on Jan. 27, 2016. The West Antelope 3 Coal Lease extends over 3,508.31 acres on private land with public lands coal in the subsurface.

BLM says it will accept comments on the project until September 26 at blm_wy_west_antelope_3@blm.gov. The bureau asks commenters to insert "West Antelope 3 Coal EIS Scoping Comment" in the subject line.

Time for money bill short; Senate doesn't have budget

The Senate adjourned for a month-long summer vacation August 3 without addressing a fiscal year 2018 Interior and related agencies appropriations bills.

Compounding the Senate's upcoming problems in September when it attempts to move the Interior bill and other spending bills, the Senate has no guiding budget. And, apparently, Republican leaders have given up on writing such a budget.

So with only days left before fiscal 2018 begins October 1, the Senate, House and the Trump administration will be up against it in fashioning final fiscal 2018 money bills. Thus, the betting now is that Congress will once again extend existing spending levels for several months to give itself time to write appropriations bills.

Even without a guiding budget the Senate Appropriations Committee on its own July 20 set up a titanic battle for later this year by approving a spending ceiling for the Interior bill that is \$600 million more than a House Appropriations Committee level, and almost \$5 billion more than a Trump administration request.

In contrast with the Senate the House Appropriations Committee July 18 did approve its version of a fiscal year 2018 Interior and related agencies spending bill (HR 3354) and cleared the measure for House floor action.

Although the rider-packed House committee bill would not go nearly as far as the Trump administration requested in reducing domestic spending for fiscal 2018, the ceiling of \$31.4 billion is \$800 million less than a fiscal 2018 appropriation of \$32.2 billion.

The Trump administration had recommended \$4.3 billion less than the subcommittee number, or \$27.1 billion. The Senate Appropriations Committee approved a ceiling of \$32 billion, again that is \$600 million more than in the House committee's HR 3354.

The House Appropriations Committee July 18 in its mark-up rejected several major Democratic amendments, including a major one that would have struck a rider from the bill that would ban any work on listing any wolf subspecies under the Endangered Species Act.

Wild horse rider: The House committee did accept by voice vote a significant amendment from Rep. Chris Stewart (R-Utah) that would authorize the disposal of wild horses and burros that BLM deems to be surplus.

In defending the amendment subcommittee on Interior appropriations chairman Ken Calvert (R-Calif.) argued, "The amendment only allows the humane euthanizing of unadopted horses and burros, just as we do for unadopted dogs and cats. This amendment does not allow horses and burros to be sold for processing for commercial products for consumption."

But Rep. Debbie Wasserman Shultz (D-Fla.) said, "This amendment would allow the cruel and inhumane practice of large-scale euthanasia of wild horses and burros. It's as simple as this: Americans overwhelmingly oppose the extermination of wild horses."

Wild horse advocates also protested. Said Suzanne Roy of the American Wild Horse Campaign, "Let's be clear: House Appropriations Committee members just signed a death warrant for America's mustangs and it will lead to the wholesale destruction of these irreplaceable national treasures."

The Trump administration first touched the third rail of wild horse management May 23 in releasing its fiscal year 2018 budget request - it proposed the sale of excess animals for slaughter. How the Trump proposal fits in with the Stewart amendment is not clear, but both would authorize disposal of a large number of the 70,000 wild horses and burros on the public range. The range only has a carrying capacity of 26,000 animals, according to Stewart.

On the money front for BLM resource management and the National Forest System the House Appropriations Committee approved modest decreases. For BLM resource management the committee approved a decrease of \$20 million, from \$1.095 billion in fiscal 2017 to \$1.075 billion in fiscal 2018. For the National Forest System the committee also approved a decrease of \$20 million, from \$1.513 billion in fiscal 2017 to \$1.493 billion in fiscal 2018.

The committee allocations for some public lands programs were a little higher than those numbers would at first suggest, because the panel reduced allocations for federal land acquisition under the Land and Water Conservation Fund. Thus the National Forest System allocation actually increased by a small amount outside of land acquisitions.

As has become customary, wildfire suppression ate up a significant portion of the subcommittee's \$31.4 billion allocation, \$3.4 billion, or about 11 percent of the total. And the committee did not act on recommendations that it attempt to shift emergency wildfire costs out of the bill and into disaster funding.

The committee set aside \$465 million for the payments-in-lieu of taxes (PILT) program, which Congress has occasionally paid for outside of appropriations bills. The \$465 million matches the fiscal 2017 appropriation. The Trump administration had recommended \$397 million for PILT.

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The amendments/riders in the bill include such things as a ban on implementing a wetlands regulation; a ban on listing the greater sage-grouse as threatened or endangered under the Endangered Species Act; and a ban against delisting of the gray wolf in Wyoming.

The legislation would also ban the listing of any wolf species in the lower 48 states as threatened or endangered under the Endangered Species Act (Section 117).

That blanket ban would forbid the use of funds to "treat" any wolf species as threatened or endangered under the act, including the Mexican gray wolf. The Fish and Wildlife Service June 30 proposed a new recovery plan for the endangered Mexican gray wolf that anticipates a future population in the Southwest of the United States of 320 wolves, plus 170 in Mexico. The population of the lobo, the most endangered of the wolf subspecies in the world, is currently 130 in Arizona and New Mexico.

Senate energy bill may have to wait in line this fall

There is no indication of revenge, but Senate Republican leaders have not yet made time available for Sen. Lisa Murkowski's (R-Alaska) signature energy bill (S 1460).

And when Congress returns to work next month, it will be faced with a loaded agenda with appropriations bills and tax reform the top priority. So the window that opened early this month to slip the energy bill through the Senate presented perhaps the best chance of moving S 1460, and that window is now closing.

The bill has been on the Senate agenda since Murkowski and ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) introduced it on June 28.

But then came Murkowski's fateful late July votes against legislation to replace/revise the Obama administration's Affordable Care Act. It has been suggested that President Trump and Secretary of Interior Ryan Zinke put great political pressure on Murkowski and threatened revenge.

That revenge, theoretically, could come in the form of damping down energy development in the National Petroleum Reserve Alaska and the coastal plain of the Arctic National Wildlife Refuge. However, the development is also a signal ambition of the trump administration, which may not want to cut off its nose to spite its face.

In addition the health care vote was Senate Majority Leader Mitch McConnell's (R-Ky.) top priority and he may be tempted to exact his own revenge on Murkowski. But Senate comity argues against it.

The contretemps between Murkowski and the administration cuts both ways what with the Interior Department dependent on Murkowski on all sorts of issues, from energy development to confirmation of nominees.

Murkowski did cancel a scheduled July 27 hearing on the nomination of former Texas Comptroller Susan Combs as assistant secretary of Interior for Policy.

Murkowski chairs both the Senate Energy Committee and the Senate subcommittee on Interior appropriations.

While the energy bill from Murkowski and Cantwell addresses in the first instance energy, it contains few provisions dealing with onshore energy production.

It does, however, contain major conservation provisions such as making permanent the Land and Water Conservation Fund, establishing a Park Service

maintenance fund, making permanent the National Historic Preservation Fund and approving 60 individual Forest Service, BLM and Park Service management bills.

A predecessor energy bill in the last Congress was under serious consideration by the House and Senate late into December, but eventually failed. A matching House measure would also have added provisions to expedite timber sales and to accelerate hard rock mining permits.

House committee leaders are reportedly ready to assemble an energy bill of their own. House Republican leaders have far more leeway than their Senate counterparts in quickly moving legislation.

The Senate bill contains one provision with some potential to expedite applications for permit to drill (APDs) for oil and gas on the public lands. The provision, advanced by Sen. John Hoeven (R-N.D.), would authorize a pilot program in one state (presumably North Dakota) to study ways to accelerate the processing of APDs to meet state standards where (1) less than 25 percent of the minerals in a spacing unit were owned by the federal government and (2) the surface estate was not owned by the federal government.

Outside the energy arena S 1460 also addresses the speed (or lack thereof) of processing hard rock mining permits. The provision would have BLM and the Forest Service "to the maximum extent practicable" establish deadlines for all kinds of permitting decisions for critical minerals.

Last year the Senate approved its version of the energy bill on April 12, 2016, by an 85-to-12 margin with broad bipartisan support. The House May 25, 2016, approved its version of the comprehensive energy bill by a 241-to-178 margin.

IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.plnfpr.com/ibla.htm>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

Subject: Grazing rights/preference.

BLM decision: BLM will reject an attempt to transfer grazing preference to a third party.

Administrative law judge: Affirmed BLM because grazing rights were canceled.

Appellant permit applicant: Administrative judge erred because grazing preference remains after grazing rights are terminated.

IBLA decision: Affirmed judge and BLM.

Case identification: *K. John and M. Martha Corrigan, et al. v. Bureau of Land Management, 190 IBLA 371.* Decided August 10, 2017. Twenty-six pages. Interlocutory appeal from an Administrative Law Judge order granting summary judgment to BLM, and ruling that a former permittee's grazing preference and permitted use were extinguished when the permittee's grazing permit expired.

IBLA argument: IBLA Administrative Judge Amy B. Sosin upheld an administrative law judge's decision upholding a BLM decision to deny an application for grazing preference. The applicant sought to obtain the grazing preference formerly held by the Hanley Ranch. BLM had refused to renew the Hanley Ranch grazing permit but the appellant argued that the ranch's grazing preference continued. Held Sosin, "Here, BLM decided not to renew Hanley Ranch's grazing permit. BLM properly did so under the renewal regulation. Appellants' argument that BLM must separately cancel grazing preference is not supported by law and stems from their view - which we have rejected - that grazing preference is an indefinite 'property-based' entitlement." The appellant also argued that Congress in annual appropriations bills had kept alive grazing permits subject to application for renewal, meaning that the Hanley Ranch permit was still alive, despite BLM's decision. Of that argument Sosin held, "Therefore, once the Board affirmed BLM's decision not to renew Hanley Ranch's grazing permit, the permit expired as of February 2012, and BLM properly denied Hanley Ranch's February 2013 application for annual grazing use because its grazing permit had 'terminated by operation of law.'"

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Subject: Gold mine plan of operations.

BLM decision: BLM will approve a gold mine plan after preparing an environmental assessment (EA).

Appellant Indian tribe: BLM erred because the mine will have adverse effects on neighboring tribal lands.

IBLA decision: Affirmed BLM.

Case identification: *Confederated Tribes of the Goshute Reservation*, 190 IBLA 396. Decided August 17, 2017. Twenty-eight pages. Appeal from a decision of the Salt Lake (Utah) Field Office of BLM, approving the Kiewit Mine Project in western Tooele County, Utah. U-87834; DOI-BLM-UT-W010-2012-0010-EA.

IBLA argument: IBLA Administrative Judge Amy B. Sosin upheld a BLM decision approving a gold mine plan of operations for the Kiewit Mine Project after preparing an EA. The appellant Indian tribe objected that mining on the 105-acre tract would impair adjacent tribal lands. But Sosin said BLM had prepared an adequate EA and record of decision. "We affirm BLM's decision because the Tribes do not meet their burden to show that BLM committed an error of law, or a material error in its factual analysis," Sosin held. The appellant Consolidated Tribes of Goshute Reservation argued the EA violated the National Environmental Policy Act, the Federal Land Policy and Management Act, the National Historic Preservation Act, and an 1863 treaty between the tribes and the United States.

Notes

DoI nominees still pending. The Interior and Agriculture Departments still lack most key political policy makers, seven months after President Trump was sworn in as President. Most pointedly, perhaps, Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) July 27 canceled a scheduled vote on former Texas Comptroller Susan Combs as assistant secretary of Interior for Policy. At the time Murkowski was in a contretemps with the Trump administration over her vote against a health care bill. The Combs vote has not been rescheduled yet. The committee does have a hearing scheduled for September 7 on the nomination of Joseph Balash to be Assistant Secretary of the Interior for Land and Minerals Management. Balash was Sen. Dan Sullivan's (R-Alaska) chief of staff. Also on the President's ledger Trump on August 1 said he would nominate the general counsel of a wellness company, Ryan Nelson, as Interior Department Solicitor. Nelson has extensive experience with public lands litigation, including a stint as deputy assistant attorney general for the Environment and Natural Resources in the Justice Department. Finally, last month Secretary of Interior Ryan Zinke named the Utah wildlife chief, Greg Sheehan, as acting director of the Fish and Wildlife Service until a director is named and confirmed. No Interior Department agency heads have been nominated yet. For the Department of Agriculture the administration has yet to select a nominee for Under secretary for Natural Resources to oversee the Forest Service. Incumbent Forest Service Chief Tom Tidwell continues to fill that position, but he is retiring at the end of the month.

Montana refuge opened to grazing. Secretary of Interior Ryan Zinke July 31 ordered the Fish and Wildlife Service (FWS) to open the Charles M. Russell Wildlife Refuge for grazing. The refuge will grant grazing privilege to ranchers burned out by the 270,000-acre Lodgepole fire in eastern Montana. The 1.1 million-acre refuge contains grasslands that have not been grazed for decades. FWS says it will negotiate individual agreements, but will open the refuge immediately with the paperwork to follow. "This is a difficult time for many families in Montana and we are eager to get to work as neighbors do and help people impacted by this fire disaster. We stand ready to welcome our neighbors in need," said Paul Santavy, the refuge manager. One wildlife ecologist said opening the refuge is an inappropriate strategy. George Wuerthner objected to opening public lands to private interests. He recommended help for the ranchers - loans, hay and emergency assistance, but not access to public lands. Wuerthner is the ecological projects director for the Foundation for Deep Ecology.

Grazing rights sale bill back. Eight Democrats reintroduced legislation (HR

3624) July 28 that would authorize ranchers to sell their grazing permits to the federal government. The idea is to retire as many grazing permits as possible. Existing law doesn't allow for permit retirements. Rep. Adam Smith (D-Wash.) is the lead sponsor. The livestock industry has long opposed the legislation. HR 3624 would allow for the retirement of up to 100 permits and leases per year. The bill does not mention a source of money for the program.

Conference Calendar

SEPTEMBER

6-9. **Nevada Mining Association Annual Convention** at Lake Tahoe, Nev. Contact: Nevada Mining Association at (775) 829-2121 or <http://www.nevadamining.org>.

15-19. **The Wildlife Society Annual Conference** in Albuquerque, N.M. Contact: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197. (301) 897-9770. <http://www.wildlife.org>.

21-24. **Public Lands Council Annual Meeting** in Flagstaff, Ariz. Contact: Public Lands Council, 1301 Pennsylvania Ave. N.W. - Suite 300, Washington, DC 20004. (202) 347-0228. <http://www.publiclands council.org>.

22-25. **The Geological Society of America Annual Meeting** in Seattle, Wash. Contact: The Geological Society of America, 3300 Penrose Place, Box 9140, Boulder, CO 80301. (1) (800) 472-1988. <http://www.geosociety.org>.

OCTOBER

1 3. **Interstate Oil and Gas Compact Commission Annual Conference** in Pittsburgh. Contact: Interstate Oil and Gas Compact Commission, P.O. Box 53127, Oklahoma city, OK 75132 3127. (405) 525 3556. <http://www.iogcc.state.ok.us>

1 4. 41th **Geothermal Resources Council Annual Meeting** in Salt Lake City, Utah. Contact: Geothermal Resources Council, P.O. Box 1350, Davis, CA 95617 1350. (530) 758 2360. <http://www.geothermal.org>.

16 20. **Annual Oil & Gas Law Short Course** in Westminster, Colo. For information see <https://www.rmmkf.org>. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321 8100. <http://www.rmmkf.org>.

26 28. **National Land Conservation Conference** in Denver. Contact: Land Trust Alliance, 1331 H St., N.W., Suite 400, Washington, DC 20005 4711. (202) 638 4725, <http://www.lta.org>.

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8 10. **Independent Petroleum Association of America Annual Meeting** in Naples, Fla. Contact: Independent Petroleum Association of America, 1201 15th Street NW, Suite 300, Washington, DC 20005. (202) 857 4722. <http://www.ipaa.org>.

14 17. **The National Trust for Historic Preservation Conference** in Houston. Contact: National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, DC 20036. (202) 588 6100. <http://www.nationaltrust.org>.